



**EXPERT REPORT**  
**on Remedies and Redress Mechanisms for War-Affected Individuals in Ukraine**

**November 2023**

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## **ABBREVIATIONS**

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CRSV – Conflict-Related Sexual Violence

European Convention – European Convention on Human Rights

European Court – European Court of Human Rights

ICC - International Criminal Court

IHL – International Humanitarian Law

NGO – Non-Governmental Organisation

OHCHR - Office of the United Nations High Commissioner for Human Rights

Register of Damage - Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine

SOP - Standard Operating Procedure

UN - United Nations

UNCC - United Nations Compensation Commission

2005 UN Basic Principles and Guidelines - 2005 United Nations (UN) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

## EXECUTIVE SUMMARY

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The present expert report maps the domestic framework of relief measures and mechanisms introduced by Ukraine for civilians affected by the current phase of the aggression of the Russian Federation against Ukraine, i.e., after 24 February 2022. It aims to assist the Ukrainian authorities in their ongoing efforts to provide victims-centred remedies and redress that are deeply rooted in the European Convention on Human Rights, case-law of the European Court of Human Rights and practices and recommendations of the Committee of Ministers, as well as international humanitarian and customary international law. It also aims at fostering coherence, complementarity, and interoperability between relevant domestic mechanisms and the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine, in line with the “Riga Principles”.

The report reviews the several existing types of domestic assistance (compensatory and relief) mechanisms (based on a broad range of laws, regulations, resolutions, institutional and other arrangements) in their dynamics and key further initiatives, and analyses the developments concerned with documentation of environmental and cultural damages. It accordingly covers and provides specific recommendations on:

- Damaged and destroyed housing;
- Internally Displaced Persons;
- Persons deprived of liberty and their family members;
- Persons missing under special circumstances and their next of kin;
- Persons disabled as a result of injury or other damage caused to health by explosives, ammunition or weapons;
- Volunteers and individual helpers repelling armed aggression, who became disabled or lost their life as a result of injury, contusion, maiming or illness;
- Persons who became disabled or lost their life as a result of injury, contusion, maiming or illness, while performing official or professional duties;
- Children affected by hostilities and armed conflicts;
- Persons affected by the destruction of the Kakhovka hydro-electric power station dam; and
- Documenting and valuation of environmental and cultural damages.

The report analyses documenting requirements and evidentiary standards, as well as the diverse databases and national registers used for processing data on aggression-related damages and assistance; valuation of the damages and losses; remedies and relevant immediate (domestic) reparations in criminal and civil law contexts; and the involvement of victims, civil society, and non-governmental organisations. Finally, and importantly, it considers the relationship between the domestic mechanisms and the Register of Damage.

The analysed domestic framework is complex, multi-layered, composite, and covers limited (established or assumed) types of the enormous and expanding scope of damages. The measures primarily provide partial (fixed) monetary compensation for, or alleviation of loss of life, disability, and other health impairments caused by military impacts; internal displacement and related social hurdles; certain damages caused to housing and some pecuniary losses; and various non-pecuniary relief. Moreover, most measures are made available or prioritised based on territorial criteria or conditioned by the engagement of individuals in resisting the aggression or mitigating its consequences.

The gradual expansion and improvement of the Ukrainian domestic system of urgent relief and further reparation initiatives, offering targeted assistance to individuals affected by the aggression of the Russian Federation against Ukraine, is commendable, as it aims at complying with the obligation to provide all possible assistance and support to the victims of gross violations of international human rights law and serious violations of international humanitarian law, by the authorities who are not responsible for these violations and not bound by the state responsibility-based obligations to provide full reparations (pending decisions as to reparations with respect to liability of the Russian Federation). The intentions to build coherence in the national system of relief efforts and actions to provide relief to victims are important, timely and welcome. While the limitations and some deficiencies of the system may be attributed to the scale and nature of the related atrocities, corollary dynamics, budgetary, institutional and other constraints, it is advisable to intensify efforts to overcome its considerable fragmentation. This concerns entities in charge, administrative procedures and their operation in practice. It is also needed to steer the system as a comprehensive interim reparations programme. Improvements should encompass consolidation of overall strategic and budgetary planning, data management, and relevant IT solutions, as well as further expansion of the range of damages addressed, measures available, and categories of beneficiaries covered with due priority to the most vulnerable groups who suffered severe and/or multiple damages. Emphasis should be placed on advancing and implementing an individualised, victim-centred and gender-sensitive approach and tailored support measures, while enhancing effective investigation and discharge of related procedural obligations.

In pursuit of these objectives, the Ukrainian authorities are invited to consider several recommendations. Specific recommendations for particular mechanisms are presented in the respective sections. Other recommendations have general applicability across the entire system. In particular, the Ukrainian authorities are encouraged to consider:

- applying *jus ad bellum*-driven full reparations, or/and combined with more targeted and itemised *jus in bello*-based and relevant human rights norms-related substantiation of specific internationally wrongful acts;
- improving strategic and institutional co-ordination, notably through comprehensive policy steering, including by developing a consolidated domestic programming instrument (a comprehensive national strategy on reparations), and relevant budgetary planning, coherence of legislation on the entire framework of relevant relief measures, including on the rights and remedies for the war-affected people, guided by a victim-centred and gender-sensitive approach;
- synchronising the already developed system and the system yet to be built with the requirements of the European Convention and the case-law of the European Court as regards Ukraine, among others as to the obligation to implement final judicial decisions; in particular, accumulation of debts and non-enforcement of (potential) judicial decisions should be avoided, since they could result in further deterioration of Ukraine’s compliance with the relevant general measures required under the execution of the European Court judgments and guidance of the Committee of Ministers in that respect;
- consolidating the various registers and electronic data management solutions by creating a domestic consolidated data management ecosystem of the aggression-related damages and victims involving a criminal procedure-based constituent or securing the mutual technical and legal interoperability of the registers;
- advancing the valuation methodologies, which are a central concern across examined compensatory and support programmes, by drawing on international standards and approaches

- suggested by the European Court's case-law, including psychological suffering and relevant damages;
- ensuring uniformity and application of enhanced legislative techniques, terminology related to the aggression, outlining its phases, territorial and other parameters, and related wording used in the mechanisms and their eligibility criteria, defining the victims' categories clearly, including elements that define who the victims are, their needs, vulnerabilities and procedures reflecting the urgency or necessity of aid;
  - streamlining the procedures and reducing the administrative burden on the beneficiaries, including by promoting a proactive approach of the bodies in charge, bypassing initial judicial corroboration of facts;
  - adjusting or removing certain limitations that may currently restrict access to most needed relief measures, including by expanding the scope of the entire framework to ordinary, unqualified civilians and the range of damages concerned;
  - applying gender-sensitive and anti-discriminative approaches to all domestic remedies and redress mechanisms, implementation practices and support measures, to further advance relief measures available for the most vulnerable and affected victims, including women and children.

The considerations of the criminal justice-chain response to aggression-related atrocities, war and other international crimes and serious human rights violations, as well as securing effective investigation and discharge of further procedural obligations with regard to the latter, require international criminal law-compatible and further procedural legislative adjustments, streamlining institutional, including statistical and data-processing developments. This involves specific focus on conflict-related sexual and other forms of gender-based violence, child abuse, deportation and related atrocities, introducing long-term support programmes and other remedies for victims and survivors.

The civil justice and other judicial remedies would benefit from careful assessment of the court practice concerned with the relief mechanism(s), scope of the duty of Ukraine to compensate the damages. It would be advisable to revisit the judicial practice related to the lifting of the (state) immunity of the Russian Federation for the purposes of domestic procedures.

The ongoing advancement of the environmental and cultural damages-related set of documenting, investigation, relevant data management arrangements would benefit from further focus on their service-oriented facets and other internationally tested types and dimensions of specific reparations.

There is also room for improvement of information exchange, co-ordination, and joint input by relevant non-governmental organisations to the operation and advancement of the relief mechanisms, as well as consultation of and outreach to victims, with the management of victim expectations being an integral part of this process.

Without prejudice to the future rules and regulations and to any future decisions to be adopted by the Register of Damage in virtue of its competences (CM/Res(2023)3), recommendations are also made regarding the relationship between the domestic framework and the Register of Damage (and possibly other international reparations procedures). They notably concern the need to:

- address a series of gaps in the national documentation and data management systems/registers, as well as valuation methodologies, and proceed with co-ordinated structuring and preparation of



claim(s) on behalf of the Ukrainian authorities, including in line with the overall strategies developed as a part of reparations-related policy steering;

- ensure that the domestic mechanisms will be able to seamlessly exchange data and information with the Register of Damage to the extent possible, using compatible data formats and in compliance with applicable laws, including data protection and evidence protection requirements;
- reinforce the victim-centred approach by taking into account the domestic legal systems' regulations so that they can constitute the basis for constructing an upwards approach towards the Register.

## 1 INTRODUCTION

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The present report and its recommendations map the domestic framework of relief measures and mechanisms introduced by Ukraine for civilians<sup>1</sup> affected by the current phase of the aggression<sup>2</sup> of the Russian Federation against Ukraine, after 24 February 2022.

Its preparation is the result of a collaborative process agreed upon with the Ukrainian authorities, with the primary objective of assisting in their ongoing efforts to provide effective remedies for victims at the national level, guided by a victims-centred approach. These efforts are rooted in the requirements of the European Convention on Human Rights (the European Convention), to which Ukraine is a State party. This includes the case-law of the European Court of Human Rights (the European Court) and the practice of the Committee of Ministers of the Council of Europe in exercising its function of supervision of the execution of judgments from the European Court (Article 46 of the European Convention). They also aim at giving effect notably to the 2005 United Nations (UN) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, and the 2011 Guidelines of the Committee of Ministers on Eradicating impunity for serious human rights violations.

The report equally aims at informing efforts to achieve coherence, complementarity and interoperability, to the extent possible, between domestic mechanisms and the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine Resolution (the Register of Damage), established by Resolution CM/Res(2023)3 of the Committee of Ministers of the Council of Europe, with a view to a comprehensive system of redress.

The report draws on the “Riga Principles” adopted at the Informal Conference of Ministers of Justice of the Council of Europe, held in Riga on 11 September 2023,<sup>3</sup> which foresee that all necessary assistance should be provided to the Ukrainian national authorities to facilitate the co-ordination of domestic efforts to support the Register's functioning. In particular, these include: a victim-centred approach; a firm legal

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<sup>1</sup> Due to the relevant specifics, the report does not provide an examination of the extensive compensatory allowances, other assistance, and support measures for combatants and other fighters, or persons engaged in military or similar activities, (e.g., demining etc.), as well as law-enforcement and security activities in the hostilities' area, as well as war veterans proper.

<sup>2</sup> The term 'aggression' is used in line with the Resolution CM/Res(2023)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine, unless it mirrors the wording of documents reviewed herein.

<sup>3</sup> [Declaration of the Informal Conference of Ministers of Justice of the Council of Europe](#), on the occasion of the Conference: “*On the Path to Justice for Ukraine: Advancing Accountability, Reuniting Children with Their Families, and Supporting the Resilience of its Justice System*” (11 September 2023, Riga, Latvia).

basis, authority and legitimacy; support to the Ukrainian national institutions; coherence, complementarity and interoperability; civil society engagement, and work towards effective reparations.<sup>4</sup>

The present expert report was prepared by the international consultants Mr. Erik Svanidze and Mr. Norbert Wühler, with the support of the Council of Europe Secretariat (Directorate General of Human Rights and the Rule of Law, DGI). It was prepared in the framework of the Council of Europe co-operation projects “Judicial and non-judicial remedies for the human rights protection of the war-affected people in Ukraine” and “Support to the functioning of justice in the war and post-war context in Ukraine”, implemented through the Council of Europe Action Plan for Ukraine “Resilience, Recovery and Reconstruction” (2023-2026).

The analysis involved an in-depth research and assessment of primary and secondary legislation, relevant policy instruments, various supplementary materials, as well as consultations and discussions between the Council of Europe, international organisations, and Ukrainian authorities on domestic redress mechanisms for damage caused by the aggression of the Russian Federation against Ukraine, including an exchange of views held in a hybrid format (Strasbourg and online) on 19 June 2023.<sup>5</sup> A series of meetings conducted in a hybrid format with key Ukrainian authorities and stakeholders, including civil society, in July and August 2023 provided a basis for the further development of the analysis.

The report presents a general overview of national assistance and relief (compensatory<sup>6</sup>) measures for the main categories of the war-affected individuals,<sup>7</sup> the relevant regulatory framework and its analysis from the point of view of the right to a remedy and immediate reparations for victims of gross violations of international human rights law and serious violations of international humanitarian law, in particular the European Convention as interpreted by the European Court, other European standards, as well as the 2005 UN Basic Principles and Guidelines and the practice of the relevant international compensatory

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<sup>4</sup> See also the report from the Parliamentary Assembly of the Council of Europe's Committee on Political Affairs and Democracy, [Ensuring a Just Peace in Ukraine and Lasting Security in Europe](https://pace.coe.int/en/files/33074/html), doc. 15842, 10 October 2023. <https://pace.coe.int/en/files/33074/html>

<sup>5</sup> See <https://www.coe.int/en/web/human-rights-rule-of-law/-/exchange-of-views-on-national-redress-mechanisms-for-damage-caused-by-the-aggression-of-the-russian-federation-against-ukraine>

<sup>6</sup> Apart from following the 2005 UN Basic Principles and Guidelines and 2011 Guidelines of the Committee of Ministers on Eradicating impunity for serious human rights violations, the report operates with the terms ‘reparation(s)’, ‘compensation’ and related wording when mirroring the terminology used in the Ukrainian legislation.

<sup>7</sup> The analysis does not aim at an examination of insurance, including medical and other schemes that may cover relevant incidents and associated consequences. See, *inter alia*, CMU Resolution No.548 of 26 May 2023 ‘On the approval of the Procedure for providing guarantees of compensation for damage caused as a result of the armed aggression of the Russian Federation against Ukraine and military actions on the territory of Ukraine, to charterers, operators and/or owners of sea vessels and inland navigation vessels sailing under the flag of Ukraine and under the flags of foreign countries.’

mechanisms. The analysis also addresses the key considerations pertinent for the coherence, complementarity and interoperability of the domestic framework and the Register of Damage. It puts forward a set of recommendations suggesting strategic, institutional, legislative, and procedural improvements aimed at enhancing and strengthening the existing domestic relief framework tailored to civilians.

The report does not provide any independent findings regarding classification under International Humanitarian Law (IHL) or human rights law violations, whether on a broad scale or within individual incidents caused by the military aggression of the Russian Federation against Ukraine. The focus of the document is specifically concentrated on the people/individual victims-centred assistance measures and mechanisms introduced by Ukraine<sup>8</sup>. The report and its assessment are not conclusive as the situation in Ukraine and the international landscape, particularly as regards reparations, evolve rapidly and change in continuity. They reflect the state of the Ukrainian national framework up to August 2023.

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<sup>8</sup>Due to the overall focus it addresses key considerations in this regard. They could be supplemented by further focused assessments and interventions, including gender mainstreaming and relevant intersectional approach.

## 2 GENERAL CONSIDERATIONS

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The assistance provided by the Ukrainian authorities to individuals affected by the aggression of the Russian Federation against Ukraine aims at complying with the obligation to provide urgent support i.e., (compensatory and other) relief measures of immediate nature, through all possible assistance measures, and immediate procedural remedies and related reparations to the victims of gross violations of international human rights law and serious violations of IHL, by the authorities not responsible for these violations and not bound by the state responsibility-based obligations to provide full reparations (pending decisions as to reparations with respect to liability of the Russian Federation).

Domestic political expectations and the legal framework in Ukraine currently assume a straightforward application of a peremptory general principle that acts of aggression entail an obligation to make full reparations on the part of the Russian Federation. The laws and further regulations establishing the mechanisms under consideration refer to the aggression (or armed aggression or military aggression) and use extremely diverse terminology<sup>9</sup>. At the same time, there are *jus ad bellum*-driven full reparations, or/and combined with more targeted and itemised *jus in bello*-based and relevant human rights norms-based considerations and practices applicable to substantiation of specific internationally wrongful acts and related reparation claims, including taking into account relevant European Court's case-law concerning factors and parameters of violations and corresponding just satisfaction measures.

**Recommendation:** The Ukrainian authorities are invited to consider a more nuanced application of the *jus ad bellum*-based peremptory obligation of the aggressor state to provide full reparations and underpin it with more targeted and itemised *jus in bello*-based and relevant human rights norms-related substantiation of specific internationally wrongful acts, and proceed with co-ordinated structuring and preparation of claim(s) on behalf of the Ukrainian authorities, including in line with the overall strategies developed as a part of reparations-related policy steering.

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<sup>9</sup> For further details and considerations see the following Chapter of this report.

### 3 DOMESTIC ASSISTANCE AND COMPENSATORY MECHANISMS

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#### 3.1 *Damaged and Destroyed Housing*

The administrative compensatory mechanism for housing damage and destruction caused by the Russian aggression was launched in 2023. [Law No. 2923-IX](#) sets out the conditions and the procedure for the submission of applications for compensation, the process of their evaluation and decision, and the manner of payment. The Law also creates the Register of Damaged and Destroyed Property. Secondary regulations are also available.<sup>10</sup> The Ministry for Communities, Territories, and Infrastructure Development has overall responsibility for the implementation of the mechanism.

The objects for which compensation can be claimed include destroyed or damaged houses, apartments, multi-apartment houses, and unfinished constructions. Properties located in territories occupied before 24 February 2022 are not covered by the framework. Ukrainian citizens who are natural persons and who own property, or their heirs if the owner is deceased, are eligible to apply. An applicant must provide evidence of his or her title to the damaged or destroyed property. The title must in principle be proven by the record of the applicant's property title in the State Register of Real Property Rights. This burden of proof has been identified as the primary constraint on access to compensation.

Applications for compensation are submitted to Compensation Commissions, established by local self-government bodies, which control the evaluation process and decide on the applications.<sup>11</sup> An inspection of the building in question is conducted and a technical damage assessment is carried out. The inspector fills out a checklist with median amounts of the cost of materials and works, and includes a proposal for the amount of compensation to be awarded. The technical damage assessment report is entered into the Register of Damaged and Destroyed Property and forms the basis of the decision of the Compensation Commission on the amount of compensation awarded, if any.

For destroyed houses or apartments, the amount of compensation is determined according to formulas contained in the CMU Regulation No. 600 on the Administrative Procedure for Destroyed Housing. The key

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<sup>10</sup> CMU Resolution No. 381 dated 21 April 2023 on the procedure for providing compensation for damaged immovable through the electronic public service "e-Recovery"; CMU Resolution No. 516 dated 19 May 2023 on model regulations on the Commission for Compensation for Destroyed Immovables; CMU Resolution No. 600 dated 30 May 2023 on the administrative procedure for compensation for destroyed housing.

<sup>11</sup> They shall consist of at least five persons. They may also include representatives of state bodies, local self-government bodies, enterprises, institutions, organisations, experts, surveyors, architects, and representatives of international and public organisations. At least 30 percent of the membership is reserved for representatives of the public (nominated by MOs, NGOs and in villages – also by individuals).

coefficients that the formulas take into account include the location of the property, its surface, the number of rooms and the year of construction. This standardised approach is in line with that of other compensatory mechanisms that dealt with large numbers of property claims.<sup>12</sup>

The decisions of the Compensation Commissions must be approved by the local self-government body that established the Commission.

According to Law No. 2923-IX, after receiving compensation for destroyed housing, the applicant will sign an agreement by which they will cede the right to claim compensation for the same damage against the Russian Federation in favour of the State of Ukraine or the local authorities. Waivers of this kind are a frequent practice in claims and compensation mechanisms, for instance, in the German Forced Labour Compensation Programme administered by IOM.

**Recommendation 1:** It is advisable to consider the inclusion of destroyed or damaged immovables other than residential housing, for instance garages, small corner shops, offices of individuals set up in apartments, etc.

**Recommendation 2:** It is recommended to consider gradual introduction of compensation for damage to agricultural land (for instance, through mines, military movements, flooding, etc.), probably by means of a separate dedicated mechanism.

**Recommendation 3:** It is recommended to consider how to determine the most appropriate means for providing compensation, considering the feasibility of individual compensations provided or larger projects aimed at environmental recovery.

**Recommendation 4:** The national authorities could consider whether the process should be opened to non-Ukrainian property owners who were legally entitled to be domiciled in Ukraine on 24 February 2022.

**Recommendation 5:** The national authorities could consider how the joint submission of an application can be made by a balance holder of common property of a multi-apartment house if the other balance holder lives abroad or is deceased.

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<sup>12</sup> See, for instance, for the practice of the Property Claims Commission of the German Forced Labour Compensation Programme, Pierre A. Karrer, Innovation to Speed Mass Claims: The Work of the Property Claims Commission of the German Foundation "Remembrance, Responsibility and Future", 5 Journal of World Investment & Trade Law (2004), page 57.

**Recommendation 6:** The national authorities could consider whether Ukrainians living abroad or in the occupied territories should be able to issue a power-of-attorney to represent them, including for secondary legal aid.

**Recommendation 7:** The national authorities could consider whether other groups should also be accorded priority,<sup>13</sup> such as, for instance, victims of sexual violence since the approach to victims/survivors of Conflict-Related Sexual Violence (CRSV) should be particularly sensitive to their needs.

**Recommendation 8:** It is recommended to establish a longer filing period, for instance, three years after the end of martial law. This can help circumvent the need for subsequent extensions, which has been the experience of claims programs in other countries, and which caused additional administrative burdens and resulted in the exclusion of potential beneficiaries who were not aware of the extension.

**Recommendation 9:** Ways to streamline the procedure to be added to the State Register of Real Property should be considered. Alternative verification procedures should be made available in cases where (i) the person has title documents, but the BTI archive concerned is not accessible, or (ii) the person has no title documents and the BTI archive concerned is not accessible. In the first situation, secondary evidence, such as utility bills, tax, bank or insurance data that confirm the occupation and use of the property should be accepted. In the second situation, the regular court procedures verifying real estate ownership, for instance, pursuant to the Civil Code, should be simplified and properly adapted. Title verification with other public registries should be conducted. “Self-documented” evidence, such as photographs of the destruction or damage including GPS co-ordinates and other metadata, together with documentation of the context situating the building in the area concerned, as well as videos from relatives or neighbours attesting to the ownership should also be considered as corroborating evidence.

**Recommendation 10:** It is recommended to specify the respective tasks in the “rapporteur” system when the head of the Commission appoints one member as a “rapporteur”. In that case, the review and evaluation of the evidence and the technical damage assessment would be delegated to one Commission member who would present the results of his/her review and assessment and a recommendation for a

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<sup>13</sup> Priority is accorded to different groups of people in the case of destroyed and damaged property, respectively. For destroyed housing, the priority groups are listed in Law No. 2923-IX (article 9); for damaged housing, they are listed in CMU Resolution No. 381 (para. 5).



decision to the full Commission. The final decision on the application and the compensation will rest with the full Compensation Commission.

**Recommendation 11:** The national authorities should consider increasing the capacity of Commissions by allocating additional funds to engage enough building experts to support the Commissions including through engaging donors' support.

**Recommendation 12:** It is recommended to eliminate the stage of the approval of the decision of a Compensation Commission by the local self-government body. The decision can be reviewed if the applicant chooses to bring a complaint to the Ministry. The local self-government body is not involved in the details of the process and is likely only rubber-stamping the decision.

**Recommendation 13:** It is recommended to introduce the obligation for an applicant in the Law No. 2923-IX process to disclose a lawsuit for the same damages in the Ukrainian courts, and to terminate such a lawsuit once the applicant receives payment in the Law No. 2923-IX process. This would be complementary to the obligation to sign, upon receiving compensation for destroyed housing, an agreement to cede the right to claim compensation from the Russian Federation in favour of the Ukrainian State or local authorities.

### **3.2 Internally Displaced Persons**

The legal framework that ensures the rights of Internally Displaced Persons (IDPs) and the assistance they are entitled to, and that regulates the process of how IDPs are recognised and how they can obtain assistance is contained in Law No. 1706-VII and two key CMU Resolutions. [Law No. 1706-VII of 2014](#) "On Ensuring the Rights and Freedoms of Internally Displaced Persons". An IDP is defined as a citizen of Ukraine, a foreigner or a stateless person staying on the territory of Ukraine legally and entitled to reside in Ukraine permanently, who was forced to leave his or her place of residence as a result of, or in order to avoid, the negative consequences of hostilities, temporary occupation, numerous cases of violence, violations of human rights and emergency situations of a natural or man-made nature. Persons who return to their homes are no longer IDPs. If persons who otherwise meet the definition of Article 1 of Law No. 1706-VII return from abroad and find no home, they become an IDP at that point.

Internal displacement is confirmed through a certificate of IDP registration. IDPs are registered in the Unified Information Database on IDPs.

The main types of assistance for IDPs include accommodation (temporary residence); rehabilitation; free meals for IDP children in pre-school, school, and vocational education institutions; facilitation of employment; and assistance for paying interest under credit/loan agreements etc. Each municipality operates a centre that, *inter alia*, provides information to IDPs and, when necessary, refers them to a health or psychosocial support centre or other relevant services.

On 7 April 2023, the Government of Ukraine adopted the State Policy Strategy on Internal Displacement until 2025 and the related Operational Plan for 2023 – 2025. The Strategy and the Plan were developed by the Ministry for Reintegration with support from the Council of Europe and in co-operation with key national stakeholders and international partners. The Strategy aims to address the situation of mass displacement since February 2022 and the increase in the needs of IDPs as a result of the aggression of the Russian Federation against and in Ukraine. The Strategy focuses on five goals:

- i. The State's response to the challenges of internal displacement;
- ii. Safe evacuation from dangerous areas and addressing the humanitarian needs of displaced persons;
- iii. Social adaptation of IDPs at their new place of residence;
- iv. Integration and strengthening capacities of IDPs in host communities; and
- v. Support for the safe return to home communities and re-integration.

By CMU Resolution No. 330 of 18 April 2023, the Government created a Coordinating Headquarters on the Implementation of IDP Rights, which is led by the Vice Prime Minister. The Coordinating Headquarters conducts weekly meetings, bringing together relevant deputy ministers, an Ombudsperson representative, heads of regional and local military administrations, and international organisations and NGOs working on IDP matters and war-affected rights protection. Among the key matters addressed by the meetings are the collection of relevant data, assistance programmes and compensation tools for IDPs.

**Recommendation 1:** The national authorities are invited to consider revising the current Law on IDPs especially given the emerging and evolving challenges caused by the mass displacement, and, *inter alia*, the need for developing more specific criteria to determine the “integration of IDPs”, who are “no longer displaced” and who “can fully support themselves” and for their consistent application, and verification of the presence of these situations with a gender perspective.

**Recommendation 2:** Given that the Vice-Prime Minister leads the Coordinating Headquarters on the Implementation of IDP Rights, consideration could be given to empowering him/her with the authority to issue recommendations concerning technical details of the implementation of assistance programmes for IDPs, following their discussion and agreement at the weekly meetings of the Coordinating Headquarters.

### **3.3 *Persons Deprived of Liberty and Their Family Members***

Ukrainian legislation has singled out deprivation of liberty attributable to the Russian Federation as ground for social and legal support measures based on the [Law of Ukraine No. 2010-IX](#) “On Social and Legal Protection of Persons for Whom the Fact of Deprivation of Liberty as a Result of Armed Aggression Against Ukraine has been Established, and Their Family Members” (Law No. 2010-IX). Further regulations have also been introduced. When it comes to civilians, the mechanism is limited to citizens of Ukraine, whose detention was related to specific activities in support of the Ukrainian authorities.<sup>14</sup> The mechanism also concerns family members of the detained as to receiving monetary assistance on their behalf, while in captivity or death. Moreover, family members are entitled to some education-related benefits. The Law refers to illegality of detention (or actions of the aggressor state) of civilians and treats it as an additional criterion.<sup>15</sup> In particular, it does not elaborate on specific grave violations of IHL and/or human rights or relevant damages sustained by them and implies a straightforward application of the general norm that acts of aggression would entail an obligation to provide full reparations. Such grave violations are only indirectly mentioned in the provisions outlining the scope of facts to be confirmed by the documents to be submitted by (or on behalf of) a civilian applicant. The documents, including an extract from the Unified Register of Pre-trial Investigations, are to corroborate in particular, a capture, illegal apprehension, arrest, or otherwise illegal deprivation of liberty, or actual or potential (illegal) persecution by the aggressor state.

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<sup>14</sup> In particular, their detention should be related to expressing their support to Ukraine, as well as professional, public, political or human rights activities, advocating for the state sovereignty, independence, territorial integrity and inviolability of Ukraine, the democratic constitutional order and other national interests of Ukraine or other deprived persons' rights that created grounds for actual or potential risks of their illegal persecution by the aggressor state; or connected with its illegal actions or its agent with the explicit or hidden purpose of forcing Ukraine, another state, governmental authority, organisation, including international, legal entities or individuals to act or refrain from act(s) as a condition for release of a citizen of Ukraine. It remains to be seen whether these limitations will be interpreted in practice as a more detailed elaboration of an internment, a legitimate ground for deprivation of liberty recognised by IHL.

<sup>15</sup> It operates with the 'actual or potential risks of their illegal persecution' and illegality of taking hostages (Paras 1.a and b of Article 2).

The mechanism is managed by the Commission on Establishing the Fact of Person's Deprivation of Liberty as a Result of Armed Aggression Against Ukraine, composed of representatives of the government institutions concerned and five representatives of relevant civil society organisations.

A decision as to recognition of the fact of a deprivation of liberty is based on a standardised procedure. The stakeholders stressed the difficulties in confirming ongoing captivity, particularly for civilians, and about the potential abuse of this mechanism. The formalisation of the procedures, including by means of approval of template certificates issued by the law-enforcement/security agencies, reportedly has not fully solved the issue. They rely on the ICRC-issued notes, while for other cases, the applicants are prompted to seek judicial decisions confirming the (legal) fact in issue.

The NIB/State Enterprise "Ukrainian National Centre for Peacebuilding" falling under the management remit of the Ministry for Reintegration acts as an administrator of a specialised Register.

CMU Resolution No. 1281 of 15 November 2022 has provided for three types of monetary assistance of fixed amount (100 000 UAH):

- Annual allowances provided to a person deprived of liberty (or to his/her family member(s) during detention);
- One-time allowance provided to a person deprived of liberty after his/her release.

In addition, the persons concerned are entitled to the additional in-kind assistance. Most measures provided by this mechanism have a compensatory nature<sup>16</sup> and provide some relief regarding the prevailing deplorable, and otherwise wrongful treatment, serious violation of IHL and human rights of combatants and civilians concerned. The mechanism does not aim at gender-sensitive or otherwise fine-tuned rehabilitation, considering the extent of individual cases and damages, including in terms of the length of deprivation of liberty, conditions of detention, their frequent aggravation by deliberate ill-treatment or combination with other grave IHL or human rights violations. However, these factors are crucial – and they are considered by existing international reparations or protection mechanisms and

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<sup>16</sup> Except for education-related benefits suggested under this mechanism that are of encouraging and further support nature.

procedures.<sup>17</sup> The European Convention standards and the European Court's case-law regarding just satisfaction for deprivation of liberty-related violations of Articles 3 and 5 (and occasionally other rights) and related valuation of non-pecuniary damages in composite individual and group cases are noteworthy.<sup>18</sup>

Some in-kind assistance measures (including psychological and sanatorium rehabilitation, including by means of replacement by monetary allowance), as well as further regulations and instruments for their implementation (in particular with regard to the loan-related benefits), are pending full enactment.

**Recommendation 1:** The Ukrainian authorities are encouraged to seek financial, organisational, and other resources to extend analogous assistance measures to all persons who have suffered similar damages resulting from the same wrongful acts, grave violations of IHL and human rights that occurred in the context of conflict-related deprivation of liberty.

**Recommendation 2:** It is recommended to follow consistent strategic approaches, including budgetary, planning, general policy approaches, and legislative initiatives for introducing targeted social assistance and other measures, and the entire framework of relevant relief measures, including by means of developing a consolidated (single) domestic programming (policy) gender-sensitive instrument and steering mechanism.

**Recommendation 3:** The national authorities are advised to fulfil legal obligations based on the above-mentioned consistent strategic approaches, in order to avoid undermining the credibility of the support framework, including by accumulation of debts and non-enforcement of potential final and binding judicial decisions. The creation of new social obligations without the provision of adequate public funding should be avoided, also considering that such a situation would further deteriorate Ukraine's compliance with the general measures under enhanced supervision of execution of European Court's judgment in the *Ivanov/Burmych* group.<sup>19</sup> In this context, it would be important to complete the review of the respective

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<sup>17</sup> The scope of this assessment and report exceeds suggesting more detailed considerations in this regard. For the preceding practice of international mechanisms and possible legal treatment of the claims concerned, see, *inter alia*, the overall and deprivation of liberty-related deliberations concerned with prisoners of war and civilians of the Eritrea-Ethiopia Claims Commission, suggested in its Ethiopia's and Eritrea's Damages Final Award Decisions of 17 August 2009 (with further references to its Guidance Decisions and other sources).

<sup>18</sup> See *Georgia v. Russia (I)*, ECtHR [GC] judgment (just satisfaction) of 31 January 2019, appl. no. 13255/07, paras. 48-80 (with further references); See *Ilaşcu and Others v. Moldova and Russia*, ECtHR [GC] judgment of 8 July 2004, appl. no. 48787/99, paras. 484-490 (with further references).

<sup>19</sup> See <https://hudoc.exec.coe.int/eng?i=004-47973>.

social legislation and to ensure that all legislative initiatives are supported by budgetary allocations and have adequate funding provisions.<sup>20</sup>

**Recommendation 4:** It is recommended, considering the workload and operational challenges faced by the judiciary during times of war, as well as complications of the procedures, to enhance the working methods of the administrative body, and interaction with law-enforcement agencies, to minimise referral of the eligibility-related decision making to the judiciary.

**Recommendation 5:** The victims of violations are to be supported in pursuing further potential individual, or relevant state-backed, or inter-state claims through (regular/minimum) effective domestic remedies and international reparations avenues/mechanisms.<sup>21</sup> **This recommendation applies to all remedies and redress mechanisms.**

**Recommendation 6:** The Ukrainian authorities are invited to consider advancing the procedures for the civilians deprived of their liberty by the Russian Federation, and in general, other mechanisms with regard to the corroboration of the assistance measures and expenses incurred, and the assembling of relevant evidence based on IHL and/or human rights violations and relevant damages in line with the state responsibility principles, as well as existing and potential nuanced eligibility and evidentiary standards of international judicial (including European Court) and current or future specific reparations mechanisms, including the Register of Damage or other support instruments. **This recommendation applies to all remedies and redress mechanisms.**

### ***3.4 Persons Missing Under Special Circumstances and Their Next of Kin***

Following the escalation of the Russian aggression on 24 February 2022, the Ukrainian authorities have adjusted the earlier legal and institutional frameworks as to the mechanism concerned with the missing persons. On 14 April 2022, [amendments](#) introduced to the 2018 [Law of Ukraine No. 2505-VIII](#) “On the Legal Status of Persons Missing Under Special Circumstances” (Law No. 2505-VIII), ensured that the

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<sup>20</sup> CM/Notes/1475/H46-41, 1475th meeting, 19-21 September 2023 (DH), H46-41 Yuriy Nikolayevich Ivanov, Zhovner group and Burmych and Others v. Ukraine (Applications No. 40450/04, 56848/00, 46852/13), available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680ac9e88](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680ac9e88).

<sup>21</sup> See paras. 4 and 11 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles); and Article 13 of European Convention. This principle is also ingrained in positive (procedural) obligations deriving from the relevant case-law of European Court and summarised in the 2011 Guidelines of the Council of Europe Committee of Ministers on Eradicating impunity for serious human rights violations.

definition of “special circumstances” would comprise an armed conflict, military operations, temporary occupation of Ukrainian territory.

Until recently, the mechanism was steered by the Representative on Matters Concerned with Persons Missing under Special Circumstances, who led policy development, co-ordinated other relevant state organs and bodies, and performed some functions related to the facilitation of relevant activities (in particular of search groups).<sup>22</sup> The Ministry of Internal Affairs has maintained its function of identification, including formal recognition of an individual as “missing under special circumstances” and maintaining the relevant Register accordingly. A further mechanism involves a disappearance-related ground, provided it is equivalent to death by virtue of judicial decision.<sup>23</sup>

The definition of “special circumstances” introduced by the amendments to Law No. 2505-VIII has provided the relevant grounds for recognising an individual as missing. A foreigner or a stateless person missing on the territory of Ukraine may also acquire such a legal status, provided the person was on the territory of Ukraine on a legal basis. These criteria could be regarded as adequate (for the purpose of triggering the mechanism under consideration), except for discriminatory limitations regarding foreign nationals or stateless persons: there could indeed be additional difficulties in identifying and documenting non-nationals illegally present on Ukrainian territory, however, they should be equally protected while under Ukrainian jurisdiction. When competent authorities receive sufficiently clear indications, they should discharge IHL and relevant human rights-related (positive) obligations,<sup>24</sup> including accounting for missing persons.<sup>25</sup>

The range of support measures include protection of labour rights of a missing person by means of retention of their workplace and position until this status is discontinued, or they are declared deceased following the procedure established by the law. Family members and relatives of missing persons have the right to social protection provided under the general scheme of a pension for loss of the primary earner

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<sup>22</sup> According to the most recent information, this institutional arrangement is being re-assessed. <https://minre.gov.ua/2023/08/11/roz%ca%bcyasennya-minreintegracziyi-shhodo-upovnovazhenogo-zi-znyklyh-bezvisty/>

<sup>23</sup> See Section 3.6 below.

<sup>24</sup> See *Varnava and Others v. Turkey*, ECtHR [GC] judgment of 18 September 2009, appl. nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, paras. 187-194, 200-202, 225 (with further references). For specifics and exigencies of the disappearances-related and other adjacent claims see also decisions and deliberations of the Eritrea-Ethiopia Claims Commission as referenced above. For ECtHR case-law on disappearances-related factors and just satisfaction parameters (with 12.000 EUR awarded to individual applicants, however, for combined violation primarily concerned with the in compliance with positive obligations) see *Varnava and Others v. Turkey*, as referenced above.

<sup>25</sup> See <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule117>

with further conditions to be met. At the same time, this category is not provided (unless they meet other criteria) with secondary free legal aid.

The status of a person missing under special circumstances is assigned by virtue of an entry into the Unified Register of Persons Missing Under Special Circumstances. The Register is being advanced in terms of the exchange of electronic information between the stakeholders, including based on the Joint Order of June 15.06.2023 No. 181/498 of the Ministries for Reintegration and Internal Affairs and adding a block for exchange and processing of various notifications, data as to missing persons accordingly.

Reportedly, there are no difficulties in terms of confirmation of disappearance in the relevant circumstances of members of armed forces or other regular combatants that are made based on certificates issued by the military structures. Conversely, regarding civilians, the competent authorities (including the Representative) in some cases appear to refrain from recognising them as missing in special circumstances. In practice, applicants appear to be prompted to establish the legal fact of captivity within judicial procedures.

**Recommendation 1:** The Ukrainian authorities are invited to reconsider the exclusion of non-Ukrainian nationals illegally present on its territory from the scope of the mechanism concerned.

**Recommendation 2:** It would be appropriate to include family members/relatives of persons missing in special circumstances in the category of those eligible to obtain secondary free legal aid.

**Recommendation 3:** Recommendation 4 in the previous Section concerning the reduction of the scope of judicial interventions is equally relevant to the mechanism of persons missing in special circumstances.

### ***3.5 Persons Disabled as a Result of Injury or Other Damage Caused to Health by Explosives, Ammunition or Weapons***

Targeted measures supporting (ordinary/unqualified) civilians, who sustained injuries or other health damages attributable to the aggression, were introduced through amendments to [the Law No. 3551-XII of 22 October 1993](#) “On the Status of War Veterans, Guarantees of Their Social Protection”. On 12 January 2023, the Legislator partially adjusted it to the exigencies of the current phase of the aggression. The amendment extended it to “the territory with measures undertaken for ensuring the defence of Ukraine, protection of security of the population and interests of the state with the aim to repel and deter the armed aggression of the Russian Federation against Ukraine”. The framework related to this mechanism was further developed through several CMU regulations.



The mechanism applies to a person, who sustains injuries or other damage to their health, caused by explosives, ammunition or weapons, on the territories of hostilities that are defined by the Ministry of Reintegration. In terms of support measures, the mechanism does not provide for immediate compensation payments, but lifetime benefits like those provided to war veterans.

For the purposes of securing assistance to the vulnerable categories of persons under consideration, it is welcome that they are entitled (along with the war veterans and other beneficiaries covered by No. 3551-XII) to representation and other secondary free legal aid services provided by the mechanism. The same applies to the reported practice of close co-operation of the Ministry of Veterans Affairs with the Free Legal Aid Coordinating Centre for resolving individual and structured shortcomings of the procedures at stake.

A decision as to granting the status under consideration is made by the specialised Interagency Commission. To establish the required linkage between health damage and the use of weaponry in the territories concerned, an applicant or his/her legal representative shall send a written application and support documents to the Ministry of Veterans Affairs. At the same time, as is the case regarding war veterans and other categories, the applicants face considerable difficulties with compiling all, including additional (not specified in the regulations) documents.

The Commission reportedly identified considerable omissions in, and shortcomings of the regulations, including inconsistencies in the territorial application, as well as faced a lack of coherence of individual applications and support documents. The stakeholders concerned are intensively addressing the deficiencies and omissions.

The degree of disabilities is being established according to the relevant general scheme based on the conclusions of a medical-social expertise (for adults), or of medical-consultative commissions (for minors).

Upon issuing a positive decision by the Commission, further procedures for receiving the benefits and other assistance envisaged are handled by the structures of the Ministry of Social Policy.

A Unified Registry of War Veterans is maintained by the relevant Ministry. However, the regulations on the Registry have excluded other categories from the remit of the Register, including the civilians covered by the Law in issue.

By Order No. 85 of 26 April 2023, the Ministry of Veterans Affairs approved the Methodology for the Calculation of Damages and Losses sustained by Ukraine as a Result of Armed Aggression of the Russian Federation in the Area of Social Assistance of War Veterans. Apart from dealing only with the category of war veterans (and members of their families), it is technically limited to summing up the one-time and other fixed or variable allowances and expenses concerned with the provision of medical, including psychological rehabilitation, and other in-kind assistance provided by the relevant framework.

**Recommendation 1:** The national authorities are invited to consider lifting (or removing contradictory provisions as to) the territorial eligibility limitation of the assistance for civilians disabled by weaponry.

**Recommendation 2:** The proposal to shift responsibility for assembling additional documents and proceeding with further enquiries, from the applicant over to the competent authorities, is welcomed.<sup>26</sup> This shift should be supported by relevant institutional, procedural and other (including IT-based) solutions, to ensure that the administrative procedures are effectively implemented by the authorities/bodies in charge.

**Recommendation 3:** While close co-operation between the bodies/authorities providing administrative assistance and the Free Legal Aid Coordinating Centre and relevant entities of the system exists in practice, it should be reinforced, including to avoid excessive engagement of judicial proceedings.

**Recommendation 4:** It would be appropriate to amend the regulations to ensure that data on the persons concerned (persons disabled as a result of injuries or other damage to health caused by explosives, ammunition or weapons) is processed under the same, or by an interoperable database/information system.

**Recommendation 5:** It is recommended to further advance the Methodology for Calculation of Damages and Losses sustained by Ukraine as a Result of Armed Aggression of the Russian Federation in the Area of Social Assistance of War Veterans, and develop an itemised, including IHL and human rights norms-driven, methodology for calculation and valuation of individual and overall mass damages sustained by or at least relevant costs incurred with regard to (civilian) persons, who are disabled as a result of injuries or other health impairments caused by explosives, ammunition or weapons.

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<sup>26</sup> See [Draft Law No. 9141](#) adopted in the first reading on 29.06.2023.

**Recommendation 6:** It is recommended to consider ways to solve the regulatory and institutional complications of launching the mechanism dealing with civilians disabled by weaponry.

### ***3.6 Volunteers and Individual Helpers Repelling an Armed Aggression, Who Became Disabled or Lost Their Life as a Result of Injury, Contusion, Maiming or Illness***

Volunteers and individual helpers, who carry out non-armed support measures on their own accord, is the only category from the cluster of contributors specified in paras. 11-16 of Part 2 of Article 7 Law No. 3551-XII, who are non-state actors and/or not engaged in armed activities (hereinafter, volunteers and individual helpers).<sup>27</sup> Since 24 February 2022, there have been a number of inconsistent legislative developments adjusting the assistance measures for this category of individuals that comprised their extension over the current phase of aggression and territorial application, which, in addition, remained unsupported by relevant further amendments on the CMU level.<sup>28</sup> In general, the techniques used for legislating on (and provisions as to) the matters concerned differ significantly. This complicates the law-making process and implementation.

Currently, there are further appropriate regulations that allow for proceeding with a one-time monetary allowance in case of killing (death) or disability of a volunteer providing assistance to the Armed Forces, other military formations, law enforcement agencies during a special period, legal regime of emergency or martial law.<sup>29</sup> Moreover, relevant regulations have been updated regarding the benefits to families of killed or deceased volunteers and individual helpers.

The one-time monetary allowance is applicable to killing (perishing) or disability of a volunteer, if they are related to: firstly, “ensuring the defence of Ukraine, protecting the safety of the population and the interests of the state in connection with the military aggression of the Russian Federation”; secondly, the provision of volunteer assistance to the Armed Forces of Ukraine, other military entities, law enforcement agencies or state authorities during the special period or martial law regime caused by the armed aggression of the Russian Federation against Ukraine and/or another country against Ukraine.

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<sup>27</sup> Including the latter (para. 16) that has been introduced to embrace individual civilians taking the arms up ‘as a result of self-defense, as interpreted by [CMU Resolution No. 685 of 7.07.2023](#).

<sup>28</sup> The corresponding provisions of the CMU Resolution of 8 September 2015 No. 685 “ have not been amended.

<sup>29</sup> For loss of life, it is 500 subsistence minimums effective on the date of death, to family members. The disability allowance is 250, 200, 150 subsistence minimums for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> groups of disability respectively. Compare and see Section 3.7 below.

The set of benefits available to families of killed or deceased volunteers and individual helpers is available essentially under the same conditions.

At the same time, the measures apply to only one (support to Armed Forces etc.) out of 12 directions of volunteers' activities, specified by Law No. 3236-VI.

It is to be noted that the loss of life-related one-time allowance and benefits are applicable to immediate death (killing) or subsequent death. Regarding volunteers who have gone missing, judicial findings are necessary. Although the (civil code-based) normative framework, relevant practice, and procedures as to declaring an individual deceased are well-established, they are applicable in the peace-time situation.

The decisions as to the payment of one-time monetary allowances are processed by the specific (volunteers-related) Interagency Commission established by the Ministry of Veterans Affairs. By the time of assessment, it held only one session - and had to adjourn, pending remedying the inconsistencies in support documents and identified gaps in regulations. As of July 2023, there had been no decisions regarding individual applications. The stakeholders concerned are intensively addressing the deficiencies and omissions. In particular, there are discrepancies regarding the format and nuanced content of the basic documents to be provided by the applicants, including regarding substituting the missing evidentiary items, certificates by court decisions establishing the facts concerned.

Upon an approval of a positive decision, the Commission submits it (with the lists with financial parameters) to the Ministry of Veterans Affairs, which, in turn, requests the CMU to disburse the required amount(s) from the Reserve Budgetary Fund. Within five days upon taking the relevant CMU decision, the Ministry of Veterans Affairs sends the relevant package of documents to the territorial agency of the social assistance.

**Recommendation 1:** It is recommended to secure consistency of the regulatory framework in terms of the category-specific criteria, including by amending the Law No. 3551-XII, so that the disability-related benefits are clearly applicable to volunteers and individual helpers.

**Recommendation 2:** In the legislative provisions, wording on the assistance mechanisms under consideration is excessively diverse and would benefit from securing better coherence and uniformity in terms of relevant military and legal terminology, referring to the aggression, outlining the phases, its territorial and other parameters.

**Recommendation 3:** It is recommended to advance the regulations on one-time monetary allowances and benefits in case of killing (death) or disability of a volunteer in connection with the Russian aggression against Ukraine and making them applicable to other types of volunteers' activities envisaged by Law No. 3236-VI, as it has been done with regard to providing assistance to the Armed Forces, other military formations, law enforcement agencies; and in general, avoiding undertaking legal obligations not supported by budgetary, institutional or other resources and capabilities.

**Recommendation 4:** It would be advisable to adjust and approximate the grounds and procedures concerned with the recognition of a missing individual as deceased under this (and other) mechanisms, to the framework applicable under Law No. 2505-VIII "On the Legal Status of Persons Missing Under Special Circumstances", in order to minimise the need for judicial interventions (seeking establishment of the facts via court procedures and decisions).

**Recommendation 5:** The Ukrainian authorities are encouraged to solve the complications of launching the updated one-time monetary allowance(s)-related mechanism; accordingly - to digitalise the business processes and paperwork and consolidate them under the relevant database/register; and to ensure that data are processed under the same or by an interoperable database/information system.

**Recommendation 6:** A proactive approach on the part of state agencies and the Commission concerned would be appropriate to address the difficulties related to the regulations that provide for an open-ended list of additional evidentiary items potentially confirming the required circumstances and facts.

**Recommendation 7:** It would be advisable to establish formal timelines for the disbursement of the required amount(s) of one-time monetary allowance(s) or re-arrange the procedure by means of pre-allocation of certain tranches under relevant budget lines of the Ministry of Social Policies or otherwise streamline it.

**Recommendation 8:** It would be crucial to ease the administrative burden imposed on the families of volunteers (and individual helpers) notably those volunteers who lost their lives (or gone missing) and, on the occasion of further advancement of the mechanisms, at least lift the duplication in establishing essentially the same circumstances, if not merging the current procedures. It is also recommended to streamline the mechanisms dealing with the same damages or categories of victims (individuals) by merging or otherwise consolidating them, including based on a one-stop-shop approach and

introducing/advancing relevant IT solutions. **This recommendation (its latter element) applies to other categories of individuals benefitting from composite remedies and redress mechanisms.**

### ***3.7 Persons Who Became Disabled or Lost Their Life as a Result of Injury, Contusion, Maiming or Illness, While Performing Official or Professional Duties***

Law No. 2980-IX of 20 March 2023 “On One-Time Monetary Assistance for Damage to Life and Health Caused to Employees of Critical Infrastructure Facilities, Civil Servants, Local Self-Governance Officials as a Result of Armed Aggression of the Russian Federation Against Ukraine” (Law No. 2980-IX), has addressed further systemic escalation of the current phase of the Russian aggression that explicitly occurred since the second half of 2022. It concerned targeted missile, air and other significant armed attacks on energy, other civilian and critical infrastructure (mass air attacks), which, in addition, has expanded over the front-line and adjacent regions over the entire territory of Ukraine. The mass air attacks have led to casualties among civilian populations, relevant officials / servants, employees, and professionals engaged in the relief of recovery work or interventions. The Law in issue aims at securing partial assistance (one-time monetary compensation) of most serious individual consequences to the persons, who sustain them while performing their (non-combatant) professional or official duties.

The legislative framework introduced more advanced and straightforward wording that mirrors the expansion of the aggression, combat operations by means of air attacks over the entire territory of Ukraine. It has used the clause “areas subjected to bombings, airstrikes and other armed attacks”.

The one-time monetary allowance(s) is available to employees of critical infrastructure facilities, civil servants, local self-governance officials in case of loss of life, becoming disabled due to injury, maiming, concussion or because of illness sustained in relation to fulfilment of their official or professional duties.

The scope of beneficiaries belonging to the families of the category of persons in issue is adequately defined in the Law.

Various - budgetary, importance/priority-related, and other considerations could be taken into account when establishing the amounts/the scope of allowances (monetary or other), including in-kind assistance measures. However, there is little or no justification for inconsistent scaling of the awarded payments or

benefits for the same category of damages. The diversity becomes striking as far as disability-related allowances for different categories of persons are concerned.<sup>30</sup>

By the time of assessment, Law No. 2980-IX had been awaiting its practical implementation and serves as one more example of a need for appropriate strategic planning in this area.

**Recommendation:** To consider adhering to uniformity in scaling the disability-based and other similar allowances or benefits, to avoid discriminatory inferences and to ensure structured and synchronised application of the assistance measures.

### **3.8 Children Affected by Hostilities and Armed Conflicts**

The war-related advancement of the children-specific assistance framework is carried out based on Law No. 2402-III of 26 April 2001 “On Childhood Protection”. It was already in force under the preceding phase of the Russian aggression, when it incorporated special provisions (Article 30) providing for the status of a child affected by hostilities and armed conflicts. Since 24 February 2022, there have been both systemic and targeted amendments.

The status-specific protection measures apply to a child, as well as a person who, at the time of hostilities, armed conflicts, or armed aggression of the Russian Federation, did not reach the age of 18 and was injured, concussed, maimed; suffered physical, sexual violence and/or psychological violence; abducted or illegally taken out of Ukraine; as involved in military or armed formations; illegally held, including in captivity.

The status of a child affected by hostilities and armed conflicts does not provide any allowances or immediate tangible in-kind assistance. The Status-specific provisions (Article 301 of Law 2402-III) outline only the positive obligations to ensure the protection of children in the zone of hostilities and armed conflicts; who suffered as a result of them; take care of them, including re-unification with the family tracing, release from captivity, return to Ukraine of children illegally taken abroad. Local governmental agencies and local bodies self-government shall, as a matter of priority, evacuate and resettle children to safe areas (with their families or upon consent). However, these measures should not be conditional upon

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<sup>30</sup> The one-time monetary assistance in case of losing by a person concerned his/her life (including due to an ensued illness) amounts to 1 million UAH. The disability allowance is paid in the amount(s) of 800 000, 500 000, 200 000 UAH for the 1st, 2nd, or 3rd groups of disability respectively. The ratio and variance between levels of the disability-related payments significantly and inexplicably differ from similar allowances for volunteers. If for this mechanism it is 8-5-2, for volunteers it is 2,5-2-1,5 per relevant group of disability. See Section 3.6 above.

obtaining the status concerned. The status serves as a general ground for the relevant ministries through their administrative procedures for securing medical, psychological, pedagogical rehabilitation and social re-integration. Pupils with such status are provided with free meals.

There are several important points to consider regarding the relief measures and mechanisms in question. The CMU Resolution No. 268, dated 5 April 2017, "On Approving the Procedure for Granting the Status of a Child Affected by Hostilities and Armed Conflicts", with the latest amendments introduced on 1 June 2023, defines war (hostilities and armed conflicts)-related psychological violence. This refers to the moral suffering sustained by a child, which does not require further substantiation. Specifically, it is not required if it is linked to psychological violence (trauma) experienced due to the following circumstances: residence or stay in combat or armed conflict areas; temporary displacement within the country or abroad, leaving the place of residence or stay to avoid the negative consequences of an armed conflict; death (disappearance), capture, or injury resulting from an armed conflict, contusion, or maiming on the territory of Ukraine or abroad of one or both parents. However, the parents' eligibility is contingent upon their status as civilians or individuals specified in clause 2 of the "Procedure for Granting the Status of a Family Member of the Deceased Defender of Ukraine," as approved by CMU Resolution No. 740.

There are concerns related to the inherent derivative nature of the assistance measures, especially concerning limitations or prioritisation based on the merits of parents, particularly in cases of their death or disappearance. It is advisable to avoid elaborating on, or specifying norms that reverse or limit assistance/benefits available to children based on the merits of their relatives, especially in cases of parental loss of life or disappearance, within child-centric legal instruments of this nature.

The definition of psychological violence suggested in CMU Resolution No. 268 is one of the rare examples, so far, that links damages with violations of certain human rights. It is an innovative clause within the Ukrainian legal framework as it introduces an overall circumstantial presumption of psychological/moral suffering and related damages, thus eliminating the requirement for "further substantiation", which, if sustained by a child, could be sufficient for the purposes of the regulations concerned. It seems to echo the general case-law of the European Court.<sup>31</sup> Moreover, based on international standards and practice, it could serve as a basis for arguing overall or (territorial and other) cluster-related inter-state and, possibly,

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<sup>31</sup> See its Rules of Court – 3 June 2022, Practice Directions on Just Satisfaction Claims. In particular, they suggest that "... the causal link between the alleged violation and the moral harm is often reasonable to assume, the applicants being not required to produce any additional evidence of their suffering". [https://www.echr.coe.int/documents/d/echr/PD\\_satisfaction\\_claims\\_ENG](https://www.echr.coe.int/documents/d/echr/PD_satisfaction_claims_ENG)



group/mass claims. However, even in this respect, factors such as age, duration, and others may be relevant for individual as well as general moral, non-pecuniary claims, representing key additional dimensions that need to be addressed through more advanced valuations.<sup>32</sup> Similar nuanced approaches can be observed in international judicial or reparations mechanisms.<sup>33</sup>

The relevant legal framework also defines physical and sexual violence suffered by a child. However, these are more distantly - if at all - related to the violations at hand. Indeed, the former is outlined as harm inflicted on a child as a result of hostilities and armed conflicts (in the zone of hostilities and armed conflicts), of bodily injuries of various degrees, which caused physical pain or disorder. Notably, this definition does not involve attribution to any party in the conflict (even by immediately referring to the aggression or the state), nor does it explicitly link it to combat operations or weaponry. Consequently, it could potentially apply to ordinary incidents unrelated to armed conflicts.

The children granted specific status are registered in a database “On orphans, children deprived of parental care, and families of potential adopters, guardians, custodians, adoptive parents, foster parents”. The specifics of the database raise serious doubts as to its appropriateness for the purposes concerned.

**Recommendation 1:** Further advancement, including monetary assistance and itemised determination of remedies and relief measures, quality for children affected by hostilities and armed conflicts are to be treated as a matter of highest priority including by assigning a status of direct or indirect victim (as family or community member) witness or offender,<sup>34</sup> and offering systemic compensation programmes based on quality and inclusive child protection services and education.

**Recommendation 2.** There is a need to elaborate and clarify norms related to indirect limitation or derivative prioritisation of assistance or benefits for children based on merits of their relatives, in particular in case of loss of life (disappearance) of (one of) the parents. This should be done within the

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<sup>32</sup> *Ibid.* ‘Among factors considered by the Court to determine the value of such awards are the nature and gravity of the violation found, its duration and effects; whether there have been several violations of the protected rights; whether a domestic award has already been made or other measures have been taken by the Respondent State that could be regarded as constituting the most appropriate means of redress; any other context or case-specific circumstances that need to be taken into account.’ See also the displaced persons and armed (unresolved) conflict-related examples/specifics in *Chiragov and Others v. Armenia*, ECtHR [GC] (just satisfaction) judgment of 12 December 2017, appl. no. 13255/07, paras. 58-60, 74-80 (with further references); See also *Georgia v. Russia (I)*, ECtHR [GC] (just satisfaction) judgment of 31 January 2019, appl. no. 13255/07, paras. 73-80 (with further references).

<sup>33</sup> For the preceding practice of international mechanisms and possible legal treatment of the claims concerned see, *inter alia*, the overall and moral damages-related and cluster-specific deliberations of Eritrea-Ethiopia Claims Commission suggested in its Ethiopia’s and Eritrea’s Damages Final Award Decisions of 17 August 2009 (with further references).

<sup>34</sup> In the latter case, based on the international practice, children who were involved in armed formations or participated in military operations are considered as victims.

child-centric (legal) instruments of this kind. A systematic and comprehensive assessment of victims' needs, corresponding categories, including vulnerable groups, as well as critical damages and consequences to be compensated or mitigated to the extent possible, should be conducted when developing relief measures, general policies, and expanding the range of available measures to all affected children, victims of sexual violence, and the general population with injuries or health impairments.

**Recommendation 3:** It is advisable to consider the introduction of co-ordinated and cross-cutting institutional approaches, including advanced consolidated IT solutions and data-management solutions, to oversee the diverse, composite, and dynamic child-specific measures. This would serve to reinforce the legal and practical significance of children's status and enhance overall protection for those affected by hostilities and armed conflict.

**Recommendation 4:** The specific linkages between psychological violence and the damages sustained by children affected by hostilities and armed conflicts, as suggested in CMU Resolution No. 268, are indeed commendable. However, these linkages may need to be adjusted based on the legal nature, principles, and parameters of existing or future international judicial or special reparations mechanisms. If and when considering preparatory and proceeding with ensued reparations procedures, it would be appropriate to seek a more advanced/nuanced application of the immediate linkage of the psychological suffering and damages sustained by this (and other) category(ies) of victims, including with regard to attribution to the responsible party (Russian Federation, its military, agents), relevant specific causes, as well as take into account duration, age and other valuation-related factors and further the evidential standards accordingly.

### **3.9 Persons Affected by the Destruction of the Kakhovka Hydro-Electric Power Station Dam**

Ukrainian authorities have immediately responded to the destruction of the Kakhovka hydro-electric power station dam, which led to complex wide-scale, composite and long-lasting consequences and resultant unprecedented damages. At the same time, it could be regarded as an *ad hoc* targeted (cluster/serious incident-related) mechanism.

The destruction of the dam took place on 6 June and already on 19 June 2023, the CMU issued Resolution No. 626 "On some issues of providing monetary assistance to the affected population as a result of the Russian Federation's detonation of the Kakhovka hydroelectric power station dam". It provides some relief regarding the immediate needs and damages sustained by the population of flooded, dehydrated and adjacent territories. The mechanism has been based on the existing legislative framework, and engaged

relevant budgetary sources, and institutional capacities. It is supposed to gradually expand upon the identification of consequences and damages and relevant measures.

Persons affected by the destruction of the dam are entitled to individual one-time monetary assistance, one-time monetary assistance for lost crops, and general assistance measures, including damaged or destroyed housing. There is a significant disparity in the amounts allocated for one-time monetary assistance for lost crops per hectare in the Mykolaiv and Kherson regions. However, neither the pertinent regulations nor the official notifications on the Ministry for Reintegration's website have explained the rationale behind this differentiation.

The regulations do not envisage ceding the right to claim compensation from the Russian Federation.

Given the specific circumstances, the factual causal link of the damages and expenses carried out with the destruction of the dam, its linkage with IHL and human rights violations would directly depend on the findings of the domestic criminal investigation that has been launched and, possibly, findings of international organisations engaged in fact-finding in this regard. As a consequence, no major needs yet exist in addressing this issue under the mechanisms.

**Recommendation 1:** It would be appropriate to provide justification for the significant difference in the amounts of one-time monetary assistance for lost crops, calculated as per hectares, in the Mykolaiv and Kherson regions. Such transparency is essential to prevent any discriminatory interpretations or conclusions.

**Recommendation 2:** When the amount of compensation meets the requirement of full reparations to be provided to victims it would be advisable to consider implementing uniform (template) arrangements for ceding the right to claim compensation from the Russian Federation to the Government of Ukraine or self-governing bodies, depending on the source of assistance provided, for all the mechanisms concerned.

### ***3.10 Environmental Damages***

There are currently no individual support mechanisms in place to address the immediate relief of environmental consequences resulting from the Russian aggression. The limited assistance provided under the Kakhovka Dam-specific mechanism, which includes compensation for lost crops, primarily aims at easing financial burdens and overall hardships. However, the documentation and straightforward valuation methodology used in this mechanism should be considered within this context.

Ukrainian authorities have acknowledged the gravity of the environmental consequences caused by the Russian aggression. The Ministry of Environmental Protection and Natural Resources, along with its key agency,<sup>35</sup> the State Ecological Inspection, is working on adapting and implementing documentation and valuation systems. They also seek international assistance<sup>36</sup> for documenting and valuation schemes and methodologies.

The regulations package in issue provides for the "EkoZagroza" database-driven (with its online front-end <https://ecozagroza.gov.ua/en>) notification, documenting and reporting system.<sup>37</sup>

It is noteworthy that neither the database nor the procedures envisage explicit linkage of the documented damages with specific combat operations and causes. The notifications and relevant findings are remitted to the law-enforcement agencies for initiation of or proceeding with pre-trial investigations by the Specialised Environmental Prosecutors' Offices.

"EkoZagroza" is a part of the more general platform "EcoSystem" introduced since 2021. Reportedly, this (including technical) arrangement has consolidated and made it interoperable with other registers and databases maintained under the ecological domains.<sup>38</sup> External stakeholders and institutions who do not operate with "EkoZagroza"-compatible electronic systems are granted access to it through relevant "cabinet"-functionality, which appears to be a straightforward and effective institutional and technical solution.

Pre-incident or earlier data, including from monitoring schemes and reports, is crucial as evidence to establish an environmental baseline, which is necessary for substantiating the impact when using valuation methodologies. The lack of baseline data has posed challenges in international procedures, like the United Nations Compensation Commission (UNCC), leading to reduced awards or claim rejections.<sup>39</sup>

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<sup>35</sup> With regard to forestry, and some other specific spheres they are reinforced by specific agencies that are coordinated by or subordinated to the ministry in issue.

<sup>36</sup> With its in-kind formats being hindered by the rigid requirements as to accepting it due to required formalisation under external, including technical assistance regulations.

<sup>37</sup> Also, the website provides structured soil, forestry, other cluster-specific derivative, including geolocation-based, information as to the environmental damages and parameters, statistics, including as to the number of reports, i.e., incidents documented. It serves as a management, communication, and feed-back instrument with regard to the notifications received. The (e-)notification includes electronic and identification functionality of the notifying persons. It is not envisaged to serve as or treated as an avenue for submitting relevant formal claims for seeking individual remedies or reparations.

<sup>38</sup> For example the National Register of Emissions and Transfer of Pollutants.

<sup>39</sup> See inter-alia S/AC.26/2004/16, 9 December 2004, Report And Recommendations Made By The Panel Of Commissioners Concerning Part One Of The Fourth Instalment Of "F4" Claims, Paras. 50, 76, 332 And In Particular S/AC.26/2005/10, 30 June 2005, Report And Recommendations Made By The Panel Of Commissioners Concerning The Fifth Instalment Of "F4" Claims, paras. 139, 145 and other.

**Recommendation 1:** The environmental documenting provisions concerned with the aggression that were introduced under earlier various regulations should be adjusted in line or synchronised with the "EkoZagroza"-based framework.

**Recommendation 2:** It would be advisable to consider amending the documenting framework, including "EkoZagroza"-based reporting arrangements and templates so that they require or encourage assembling base line-related data and/or evidential items.

### **3.11 Cultural Damages**

There are currently no individual support mechanisms in this area. The Ministry of Culture and Information Policy (the Ministry of Culture) has started to record the affected cultural objects and the damage and destruction inflicted on them in a separate register. It has not yet managed, however, to gain a comprehensive overview and the register itself is not completed.<sup>40</sup> Currently, the Ministry keeps information and data on damage and destruction of cultural objects in an Excel database. The register that the Ministry has started to build will eventually contain tables, pictures, videos, photos etc. It is intended to serve as the central location for information, data and documentation on damage and destruction of cultural objects and objects of cultural heritage. It will also feed into the CMU No. 362 register. However, the Ministry had to suspend work on the full organisation of its register, due to a lack of funding and resources.

Much of the pertinent information and documentation is also captured and maintained by NGOs, including scans and videos of damaged and destroyed objects.

For the investigation of incidents of damage or destruction of cultural objects, the Ministry does not have a single law enforcement counterpart. It co-operates with the National Police and the National Security Service, and the Office of the Prosecutor General. It does, however, not have access to all sites. To document damage and destruction of items from museums, the Ministry has started to use the Europol format.

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<sup>40</sup> The Ministry of Culture list of affected cultural objects and objects of cultural heritage currently includes the following items: 660 cultural hubs; 607 libraries (state archives are in the domain of the Ministry of Justice); 90 museums, including their collections (for example, from the museum in Charkiv 30,000 items have been stolen); 28 theatres; 120 art educational institutions; more than 6,000 cultural platforms in communities, 2,000 of which destroyed; 664 objects of cultural heritage.

**Recommendation 1:** The Ministry of Culture should use standardised protocols for the exchange and transfer of information and documentation from law enforcement counterparts. These should use formats that allow easy integration into the Ministry's register.

**Recommendation 2:** Completing the Ministry of Culture's register (of damaged and destroyed cultural objects and objects of cultural heritage) and maintaining it as the central repository would require funding, a matter which the competent authorities are invited to consider.

## 4 DOCUMENTING AND REGISTERS

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### 4.1 *Documenting Requirements and Evidentiary Standards*

#### 4.1.1 Administrative Procedures

The reviewed mechanisms are administrative in nature, primarily intended for substantiating grounds, granting, or recording relevant statuses that enable the disbursement of allowances and provision of other benefits. To achieve these objectives, these mechanisms incorporate a set of standard derivative documents, including medical or other certificates, and do not introduce any specific evidentiary standards. Some of the requirements, documents, or circumstances that applicants must fulfil or prove are overly burdensome and time-consuming. These requirements not only create difficulties for the applicants but also place a significant burden on various bodies involved in the process, including the judiciary. Earlier specific recommendations were provided to address these issues. It is advisable to consider further standardising and enhancing these procedures, by streamlining them, using IT solutions, including platforms like the “Diia” ecosystem or similar systems.<sup>41</sup>

**Recommendation:** Assembling more advanced, immediate, including video, photo, sample-based and other evidence would be important.

#### 4.1.2 Correlation with Reparations’ Procedures

The documentation and proofs assembled for the administrative purposes, should in principle, be deemed sufficient to support subsequent international reparations procedures. By establishing a comprehensive and consistent approach to documentation and proofs gathering at the administrative level, the process of pursuing international reparations can be more efficient and effective. This will help minimise duplicative efforts and ensures that victims have the necessary support and evidence to seek redress for the harm they have suffered. Streamlining procedures should be regularly evaluated and balanced against the need for anti-corruption safeguards and other relevant considerations. It is crucial to avoid placing an excessive burden on the applicants, especially in terms of gathering the necessary evidence for prospective

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<sup>41</sup>For instance, the recent amendments made on 22 August 2023, to CMU Resolution No. 413, which deals with the procedure for granting and withdrawing the status of a combat operations participant, are a positive step in this direction. These amendments replaced the requirement for “materials of special (official) inquiry into the facts of injuries, contusions, mutilations” with the simpler need for “a certificate.” This change streamlined the procedure and reportedly allowed for the generation of certificates through the Diia platform. While the example provided relates to military personnel, similar streamlined processes can be developed for other categories of applicants.

reparations claims and procedures. To achieve this balance, proactive and consistent procedures conducted by relevant institutions should be put in place.

**Recommendation 1:** It would be important to streamline and facilitate, possibly fully digitalise, the procedures by means of IT, including “Diia” ecosystem or other solutions while balancing it against the abuses, anti-discrimination and anti-corruption safeguards and other considerations. Tailored support shall be provided to the territorial and ethnic communities (national minorities) with less access to digital tools to enable them to make applications.

**Recommendation 2:** It is advisable to ease the burden on applicants and beneficiaries and strengthen proactive procedures performed by relevant bodies and institutions, including through use and reliance on registers and databases, in particular, for assembling required evidence in support of their applications and claims, attribution of the incidents, associated damages to the Russian Federation (its wrongful acts), as applicable.

## **4.2 Registers and Databases**

### **4.2.1 Multiplicity of Databases and Registers**

From the start of the full-scale aggression on 24 February 2022, the different Ukrainian authorities started taking initiatives aimed at providing remedies and redress to victims, which is to be welcomed. Since then, the measures/mechanisms put in place have been constantly evolving in parallel with developments on the ground. However, the reasons for initial fragmentation and the gradual introduction of assistance mechanisms have led to difficulties in securing their coherence and further advancement, and to a proliferation of multiple directories and recording arrangements. Given the volume and complexity of the framework, managing them would be nearly impossible without employing appropriate IT solutions.

Many mechanisms are operating and administered - based on multiple registers, data processing tools, and, where possible, by means of some data exchange functionalities between them.<sup>42</sup> Some of the electronic registers are definitive in terms of granting a certain status, or formalising decisions, which are

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<sup>42</sup> For example, the State Register of Damaged and Destroyed Property/E-Recovery Service and Immovable Property Rights Register; Unified Information Database on Internally Displaced Persons; Unified Register of Persons in Respect of Whom the Fact of Deprivation of Liberty as a Result of Armed Aggression against Ukraine Has Been Established; Unified Register of Persons Disappeared Under Special Circumstances; Ministry of Social Policies Ecosystem being used including for registering the Benefits of Deceased/Perished Volunteers; Database ‘On orphans, children deprived of parental care, and families of potential adopters, guardians, custodians, adoptive parents, foster parents’ used for registration of the children entitled to the benefits in issue.



respectively assigned or issued by means of entries.<sup>43</sup> Many of them have been furnished with front-end, advanced, including “Diia” portal-based or other external online communication and processing functionalities.<sup>44</sup> The Unified Register of Persons Disappeared Under Special Circumstances has achieved advanced consolidation through formalised interoperability via the governmental information exchange system “Trembita”. This system ensures compatibility with registers from various agencies, enhancing the overall effectiveness of the missing persons mechanism. While the “EkoZagroza” system is not designed for processing specialised individual assistance, it is worth noting its IT solutions. This system is based on an advanced, communication-oriented platform and website. However, some mechanisms lack proper arrangements in this regard.<sup>45</sup>

#### 4.2.2 Consolidation of Registers

The authorities acknowledge the challenges associated with the multiplicity and diversity of domestic electronic databases and registers used for processing data related to aggression-related damages and assistance mechanisms and affected persons.

Recent initiatives aimed at addressing these shortcomings include the draft Law on the Registration of Victims with Loss of Life and Health-related Impairments Caused by the Armed Aggression of the Russian Federation against Ukraine, as well as the concept of a Register of Victims and Survivors.

The Register of Victims with Loss of Life and Health-related Impairments is envisioned as an automated information and communication management system designed to process relevant data for the effective administration of related measures. It is intended to be integrated into the Unified Social Information System, the largest existing ecosystem for accumulating and processing a significant portion of pertinent data. This integration holds the promise of being a technically sound and cost-efficient solution. In addition to expanding the framework for victim-oriented assistance, this system could serve as an apt solution for

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<sup>43</sup> For example, the State Register of Damaged and Destroyed Property/E-Recovery Service (with open key certificate-based electronic qualified signature(s) being used); Unified Information Database on Internally Displaced Persons; Unified Register of Persons Disappeared Under Special Circumstances.

<sup>44</sup> For example, including State Register of Damaged and Destroyed Property/E-Recovery Service; Unified Information Database on Internally Displaced Persons.

<sup>45</sup> For example, due to uncertainties in the regulations governing the Unified Register of War Veterans, data on individuals disabled due to injuries from explosives, ammunition, or weapons still require consistent processing within a register. Electronic databases for one-time monetary assistance to civilian helpers are absent. While electronic systems are being introduced for volunteers in the Ministry of Veterans, the Ministry of Social Policy’s ecosystem handles payment technicalities. Implementation arrangements and IT solutions are also lacking for the legally defined assistance mechanism for individuals disabled or deceased while performing official or professional duties. Specialised IT arrangements are not planned for the Kakhovka Dam Destruction assistance mechanism.

synchronising and consolidating various IT tools and datasets. Regarding the consolidation of mechanisms and registers, its purpose is to aggregate data related to the same categories of damages sustained by eligible individuals who qualify for different targeted mechanisms.

The introduction of the Register of Victims with Loss of Life and Health-related Impairments would represent a significant step toward the systematic consolidation of data pertaining to aggression-related damages and their IT-based management solutions. However, several challenges must be addressed. Notably, the proposed Register is planned to be managed by the central executive authority responsible for implementing public policies related to pension support and the registration of individuals subject to mandatory state social insurance (the Pension Fund of Ukraine). It is not clear how the Pension Fund officials will gain access to all data of the registers with limited access of the law-enforcement bodies, security service, the Office of the Prosecutor General, etc.

Nevertheless, in general terms, the draft Law importantly addresses the issue of interoperability of this Register with other relevant databases and IT systems. It provides for a compatibility and “real-time electronic information interaction with other information and communication systems, including without limitation with the Unified State Demographic Register, the State Register of Civil Records of Citizens, the Unified State Register of Court Decisions (where technically possible)”.

The Register of Victims with Loss of Life and Health-related Impairments is not expected to accumulate and process all data, for the entire range of the aggression-related damages and victims. The creation of the Register is however, expected to lead to further interoperable consolidation of aggression-related damages and victims’ data, along with their management systems. Solutions may also be upgraded or incorporated as needed. This would address the well-acknowledged need to introduce a domestic consolidated data management ecosystem for the aggression-related damages and victims.

The draft Law omits to envisage and address specifics of criminal law and criminal procedure-based data and the need for their correlation and incorporation in consolidated data-management systems.

The Office of the Prosecutor General’s initiative related to the Register of Victims and Survivors envisages the development of a platform (data-management system) that would serve as a directory of persons, who obtain the status of victim according to the Code of Criminal Procedure. The current Unified Register of Pre-trial Investigations provides minimum data in this regard and is reportedly not technically suitable for meaningful upgrades to address the relevant needs.

The IT tool to be developed should be capable of becoming a criminal procedure-based constituent of, or secure interoperability with, a general or aggression-related domestic consolidated data management ecosystem. It should process data and generate derivative information on damages and victims, corroborate the violation(s), specific incident(s) with the confidentiality and personal data protection standards, as well as the considerations concerned with regime of the criminal procedures-related data and initial legal filtering requirements being reconciled. Moreover, it would be necessary to extend the contemplated Register of Victims and Survivors over the entire range of victims' services, their management, and involve relevant business-processes-related functionalities.

The current *warcimes.gov.ua* platform (and relevant mobile applications available) with its front-end allowing submission of online applications, including by victims, and (potential) evidence is equipped with relevant storage capacities and initial structuring and data management, analytical functions. However, the platform, which is owned and administered by the Office of the Prosecutor General, does not extend over the criminal procedural stage and is not meant to process required victims'-related functionalities.<sup>46</sup>

A domestic consolidated data management ecosystem for aggression-related damages and victims should incorporate a component that is aligned with criminal procedures or ensure their technical and legal interoperability. This should involve observance of confidentiality and personal data protection requirements and serve the primary purpose of filtering, processing, and structuring data as to documented and recorded damages and victims in terms of their (potential) linkage with and relevant corroboration of the violations or specific incidents.

**Recommendation 1:** There is a need to introduce a domestic consolidated data management ecosystem of the aggression-related damages and victims, by further consolidating (through interoperability) the entire range of aggression-related damages and victims' data, their management systems and, where necessary/as applicable, relevant upgrade or incorporation of the existing solutions engaged. This would be in line with the "Riga Principles", in particular the principle on "Coherence, Complementarity and

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<sup>46</sup> See <https://warcimes.gov.ua/en>.

Interoperability.”<sup>47</sup>

**Recommendation 2:** There is a need to introduce relevant data management IT solutions for the mechanisms devoid of them and further advancement of those inadequate (in particular those concerned with status-granted children; deceased or injured ordinary civilians; persons who are disabled as a result of injuries or other health impairments; volunteers and individual supporters and other mechanisms or their elements outlined in the report).

**Recommendation 3:** It is advisable to integrate a component based on criminal procedure or ensure the register’s technical and legal interoperability. This should also include reconciling the requirements for confidentiality and personal data protection, as well as facilitating the initial filtering, processing, and structuring of data related to documented damages and victims. This process should aim to establish potential links and relevant corroboration of violations and specific incidents.

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<sup>47</sup> Riga Declaration - <https://rm.coe.int/moj-declaration-riga-principles-final-en/1680ac8728>, “Coherence, Complementarity and Interoperability: With a view to a comprehensive system of redress, the coherence and complementarity of actions and methodologies for claims processing should be carried out as appropriate, including through IT tools, at the domestic level, in the operations of the Register of Damage and in other international mechanisms, enabling their interoperability.”

## 5 VALUATION METHODOLOGIES

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Valuing the damages and losses incurred by those affected by the Russian Federation's aggression in Ukraine is a central concern across all examined compensatory and support programmes. Some programmes have established valuation methods, while others are still in the process of developing them. Even when a methodology is in place, consistent application is not assured.<sup>48</sup> Representatives from Ukrainian Ministries and other stakeholders identified challenges related to valuation and calculation as a primary issue.

### 5.1 Cross-cutting Items

To achieve a comprehensive system of redress, the "Riga Principles"<sup>49</sup> outline that the coherence and complementarity of actions and methodologies for claims processing should be carried out. This would include a "bottom-up" approach, in which damage valuation and calculation would be carried out at the domestic level as part of the preparation of the claim and would thus be integrated into the operations of the Register of Damage, and thereby into the future Compensation Mechanism and possibly other international mechanisms. Such integration will enable the necessary coherence among these systems.

According to its Statute (Resolution CM/Res(2023)3 of the Committee of Ministers), the mandate of the Register is to record - having first assessed their eligibility to be recorded<sup>50</sup> - the claims submitted to it. For this, it will have to define the categories of claims<sup>51</sup> that may be submitted to it and the requirements for evidence that shall accompany them. The substantive review of the claims and their adjudication will, however, be the responsibility of the future international Compensation Mechanism ("The exact form of a future Compensation Mechanism is to be determined, but may include a claims commission and

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<sup>48</sup> See Chapter 3 of this report above.

<sup>49</sup> Riga Declaration - <https://rm.coe.int/moj-declaration-riga-principles-final-en/1680ac8728>. See notably the principles on: Victim-Centred Approach; Support to Ukrainian National Authorities; Coherence, Complementarity and Interoperability.

<sup>50</sup> See notably Article 1 ("1.1 *The Register of Damage Caused by the Aggression of the Russian Federation against Ukraine (hereinafter "the Register") shall serve as a record, in documentary form, of evidence and claims information on damage, loss or injury caused, on or after 24 February 2022, in the territory of Ukraine within its internationally recognised borders, extending to its territorial waters, to all natural and legal persons concerned, as well as the State of Ukraine, including its regional and local authorities, state-owned or controlled entities, by the Russian Federation's internationally wrongful acts in or against Ukraine.*"); Article 2 ("2.1. *The Register shall receive and process information on claims of damage and evidence; categorise, classify and organise such claims, assess and determine the eligibility of claims for inclusion in the Register and record the eligible claims for the purposes of their future examination and adjudication. The Register shall not have any adjudication functions with respect to such claims, including determination of responsibility and allocation of any payments or compensation.*").

<sup>51</sup> See notably Article 5 – Conference of Participants ("5.3 *The Conference shall (...) c. approve the rules and regulations proposed by the Board for governing the work of the Register*"); Article 6 – Board ("6.5. *The Board shall, without prejudice to Article 5 (...) propose the rules and regulations governing the work of the Register and implement them as appropriate, including, in particular as regards the determination of the categories of claims, the procedures for the receiving, processing and recording of claims, the format of the claim forms and the requirements for evidence with respect to each category of claims, that shall be approved by the Conference*").

compensation fund mandated to examine and adjudicate claims and/or pay compensation for damage, loss or injury caused by the Russian Federation’s internationally wrongful acts in or against Ukraine.”)<sup>52</sup> It will be the responsibility of this Compensation Mechanism to develop the criteria and methods for the valuation of the damages and losses coming before it.

From a legal point of view, the standards for damage assessment and valuation do not have to be the same as those that the Register of Damage will apply. Ukraine is implementing the remedies and redress mechanisms examined in the present report based on international law and, importantly, out of concern for its citizens. They are anchored in their domestic legal framework, tailored to address the consequences of the aggression.

In contrast, the Register of Damage and the future Compensation Mechanism will apply the law and principles of the liability of the Russian Federation for its internationally wrongful acts,<sup>53</sup> and the extent to which damages and losses will be covered may differ between the two.

This is not to say that Ukraine should not look to international standards to guide it, but the respective damage valuation does not necessarily need to be identical. The criteria and methodologies for damage valuation in Ukrainian programmes should be clear, transparent, and consistently applied. This will allow the future Compensation Mechanism to assess and duly consider them in its decisions.

It is therefore not advisable for Ukraine to delay work on its remedies and redress mechanisms (programmes), also because some of them are quite advanced and in full operation. These programmes should proceed to achieve their purpose to provide assistance to the people affected by the aggression as soon as possible and with due priority to the most vulnerable victims and survivors who suffered gross human rights violations including CRSV and other forms of gender-based violence.

Another cross-cutting item concerns the scope and extent of certain damages and losses, their valuation and compensation, with moral damages considered as one of the primary concerns in this regard. Ukrainian courts have delivered judgments in which they awarded compensation for moral damage, for

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<sup>52</sup> Statute of the Register, Article 2.5.

<sup>53</sup> Resolution CM/Res(2023)3, notably: “Bearing in mind the United Nations General Assembly Resolution A/RES/ES-11/5 of 14 November 2022 “Furtherance of remedy and reparation for aggression against Ukraine” recognising, *inter alia*, that the Russian Federation must bear the legal consequences of all of its internationally wrongful acts in or against Ukraine, including making reparation for the injury, and for any damage, caused by such acts, and noting that this resolution also recognises the need for the establishment of an international mechanism for reparation, and recommends the creation of an international register of damage in co-operation with Ukraine”; also, “Convinced that the establishment of a register of damage constitutes a significant first step to ensure timely compensation for the victims of the Russian Federation’s internationally wrongful acts in or against Ukraine (...)”.

instance to Ukrainians held in Russian detention facilities, to persons who were forced to work for or serve in the Russian army, and to children forcibly taken to Russia. Recent legislative initiatives are aimed at ensuring urgent interim reparations including compensation for moral suffering to the victims and survivors of CRSV,<sup>54</sup> which is predominately committed against women.

One more cross-cutting item concerns the question of whether and how psychological damage and trauma are already dealt with in the existing mechanisms in Ukraine and to what extent they may or should be included in a comprehensive reparations framework. At the time of assessment, two of the current mechanisms specifically address psychological damage or provide for psychological rehabilitation. The first is the programme for persons deprived of liberty and their family members which lists psychological assistance as one of the in-kind measures available for persons falling into this category. The second is the programme for children affected by hostilities and armed conflicts. It lists among the persons eligible for assistance children who suffered sexual violence and/or psychological violence, and it provides for psychological rehabilitation as one of the measures available for these children.<sup>55</sup>

To address handling psychological damage and trauma in a future reparations framework, international principles, relevant jurisprudence from regional and international courts, and the practices of international claims mechanisms should be considered. Notably, the case-law of the European Court, specifically on just satisfaction under Article 41 of the European Convention, offers relevant guidance. While these judgments typically pertain to state actions, they establish criteria for awarding compensation for non-pecuniary damages that require a certain level of gravity. For example, purely fact-based claims only related to Russian aggression or displacement may not suffice.<sup>56</sup> The Inter-American Court of Human Rights, in cases like *Neira Alegria and Blake (Reparations)*, has provided more concrete assessments of emotional and psychological suffering, resulting in awards of just satisfaction.<sup>57</sup>

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<sup>54</sup> The Draft Law on Victims of Sexual Violence Related to the Armed Aggression of the Russian Federation Against Ukraine and Urgent Interim Reparations - [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=76965](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=76965).

<sup>55</sup> See Section 3.8 of this report.

<sup>56</sup> See, for instance, the enumeration in Zoran Radivojevic and Nebojsa Raicevic, State Liability for Non-pecuniary Damages in the Jurisprudence of the European Court of Human Rights, Social Science Research Network (2020), the most comprehensive being the one from *Varna and others v. Turkey* where the applicant had concurrently “suffered trauma, whether physical or psychological, pain and suffering, distress, anxiety, frustration, feeling of injustice or humiliation, prolonged uncertainty, disruption to life, or real loss of opportunity” (para. 224).

<sup>57</sup> See also Alexia Solomou, The Contribution of the European Court of Human Rights and the Inter-American Court of Human Rights to the Emergence of a Customary International Rule of Just Satisfaction and the Creative Expansion of Its Scope, 14 *Revista do Instituto Brasileiro de Direitos Humanos* (2014), 11-32.

In the *Ntaganda* case, the Trial Chamber of the International Criminal Court (ICC) found that psychological trauma and psychological disorders were developed by the victims of the attacks, but these were of a certain gravity, such as suicidal tendencies, depression, and dissociative behaviour, including from a sudden death of a family member.<sup>58</sup>

Notwithstanding all the differences in the context and scope of the military activities and their impact, Iraq's invasion and occupation of Kuwait in 1990/91 presented several challenges for the resulting reparations scheme that are comparable to those faced by Ukraine, and thus the practice of the UNCC that was established to implement such a scheme can be instructive for the Ukrainian situation. Specifically with respect to compensation for psychological damage and trauma, several decisions of the UNCC are relevant. They concern "non-pecuniary injuries resulting from mental pain and anguish" (MPA) and payment of compensation for death of a spouse, child or parent of the claimant; serious personal injury; sexual assault or aggravated assault or torture; witnessing the infliction of the above events on spouse, child or parent; being taken hostage or illegally detained for more than three days; hiding for more than three days on account of a manifestly well-founded fear for one's life or for being taken hostage or illegally detained; or being deprived of all economic resources, such as to threaten seriously his or her survival and that of his or her spouse, children or parents, in cases where assistance from the Government or other sources has not been provided.<sup>59</sup> Another decision laid down ceiling amounts for compensation for mental pain and anguish.<sup>60</sup>

Evidentiary standards for MPA claims were elaborated in an early Commissioner Panel report. For claims for MPA resulting from forced hiding, for instance, the Panel found that claimant statements may be the best available evidence.<sup>61</sup> To support MPA claims, extensive recourse was made to external reports by UN and other international organisations and Non-Governmental Organisations (NGOs) who documented Iraq's violations and their consequences,<sup>62</sup> as well as to medical expert reports.<sup>63</sup>

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<sup>58</sup> Reparations Order in *The Prosecutor versus Bosco Ntaganda*, ICC-01/04-02/06, pp. 66-68. Following a decision by the Appeals Chamber on an appeal by the Defence against this Order, the Trial Chamber issued an Addendum to its Reparations Order which has again been appealed by the Defence; this last appeal is pending.

<sup>59</sup> Governing Council decision 3 (UN Doc. S/AC.26/1991/3).

<sup>60</sup> Governing Council decision 8 (UN Doc. S/AC.26/1992/8).

<sup>61</sup> Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages Up to US\$100,000 (Category "C" Claims) (UN Doc. S/AC.26/1994/3), page 32.

<sup>62</sup> *Ibid.*, pages 98 and 102.

<sup>63</sup> *Ibid.*, pages 112-114.



Following international claims practice and human rights case-law, to be compensable such damage and trauma should be of a certain gravity and seriousness. Given their nature and source, it will often be difficult or impossible for claimants to submit proof for these types of claims. Consequently, external sources and presumptions should be used to corroborate such claims.

**Recommendation:** It could be considered elaborating categories of situations and violations that cause psychological damage and trauma for which compensation and other types of relief should be provided under a general future comprehensive reparations framework or concerning specific mechanisms that address psychological damage and trauma.

## **5.2 Country-wide Damages and Losses**

### **5.2.1 Valuation of Environmental Damage**

The Ministry of Environment was one of the first to comply with the selected points of CMU Resolution NO. 326 of 20 March 2022 'On Approval of the Procedure for Determining Damage and Losses Caused to Ukraine as a Result of the Armed Aggression of the Russian Federation' by adjusting the overall proceeding or adopting specific methodologies, valuation parameters with respect to the nature reserve and forest funds, land and soil, emissions of polluting substances, pollution and arbitrary use of water resources, and surrounding natural environment of relevant seas and waters. The current monetary valuation methodologies could be appropriate for an overall, general initial calculation of (straightforward) environmental damages and losses. However, when advancing, including the monetary, valuation methodologies of the environmental impairments, it would be appropriate to do it in terms of validation of basic formula(s) used, in particular their summands concerned with justification of taxes and of some coefficients. Apart from the taxes envisaged by regulations dating back 1990s, for example the water pollution-related methodology (Order No. 252) applies a flat coefficient (X10) for the increase of damage to the marine ecosystem during martial law.

The ongoing discussions and the development of methodologies are indeed focused on a wide range of contemporary scientific approaches, including ecosystem services and market domain-specific research, as well as assessment and valuation methods. These are costly in view of the technologies, scale, workforce, timing, and other factors.

There is a distribution of responsibilities between the Ministry of Environment, in particular the Environmental Inspection and its other specialised agencies, and State Emergency Service in terms of provision of guidance, methodological support, and neutralising/recuperation of environmental damages.

In general terms, notwithstanding the stance developed by international mechanisms,<sup>64</sup> it would be advisable not to overestimate the prevailing “overall assessment” practice with regard to claims as to reparation of environmental impairments and consider proceeding with well-designed, structured and grounded (including through application of contemporary scientific and technological) assessment and valuation methodologies<sup>65</sup> so that they form a basis for solid, well-substantiated claims and increase the perspectives of obtaining relevant awards.

It should be recalled that it is not possible to get a full clear picture today of the impact of the aggression on the environment in Ukraine, particularly with regard to biodiversity and the Bern Convention.<sup>66</sup> Also, the impact of the war on the environment in the surrounding countries (in particular, in the Black Sea region) should be considered. However, the acknowledged specifics of environmental consequences, related difficulties in terms of documenting and valuation of the scope and character, including of the damages concerned should not hinder introduction of individual-oriented assistance measures. However, provided and when there are budgetary, organisational, and other resources available.

**Recommendation 1:** It is advisable for the national authorities to advance the monetary, valuation methodologies of the environmental impairments in terms of validation of basic formula(s) used, in particular their summands concerned with justification of taxes and of some coefficients.

**Recommendation 2:** In addition to addressing technological and other requirements, it is important to determine the scope and specific elements to assess and value in terms of ecological damages. This should involve incorporating market and ecosystem services-oriented considerations and other parameters for valuing environmental impairments.

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<sup>64</sup> The considerations have involved difficulties in establishing a causal link between multiple concurrent causes, lack of scientific certainty and in spite of the equitable, overall assessment of the impairment or loss of environment goods or services rather than separate valuation of each different category. In addition to UNCC documents referred to above, see also ICJ - Certain Activities Carried Out By Nicaragua In the Border Area (*Costa Rica v. Nicaragua*) Compensation Owed By The Republic Of Nicaragua To The Republic Of Costa Rica, Judgment of 2 February 2018, with further references, para. 35. In terms of the “equitable basis” approach when awarding just satisfaction see *Jugheli and Others v. Moldova and Russia*, ECtHR judgment of 13 July 2017, appl. no. 38342/05, paras. 83-85.

<sup>65</sup> Which would be necessary for appropriately addressing and steering their actual recuperation.

<sup>66</sup> The Russian Federation is not a party to the Council of Europe's Convention on the Conservation of European Wildlife and Natural Habitats (1979) ( Bern Convention).

**Recommendation 3:** It is advisable to take international practices into account and to enhance existing methodologies by including elements related to the costs of reasonable monitoring and assessment of environmental damage. This should be done to assess and mitigate harm and restore the environment. Consideration should also be given to monitoring public health and conducting medical screenings, to investigate and address increased health risks resulting from environmental damage.

**Recommendation 4:** Proper co-ordination and documentation of arrangements and valuation methodologies should be considered to address the issue of accounting for and ensuring the actual costs of environmental abatement and other measures for cleaning and restoring the environment. This should involve collaboration between the Ministry of Environment and its agencies, the Ministry of Internal Affairs, the State Emergency Service, and other relevant institutions involved in these efforts.

**Recommendation 5:** It is suggested to consider prioritising the gradual introduction of relevant, including internationally tested (averaged) methodologies-based, possibly cluster, incidents, harm-specific and further assistance measures, and mechanisms for alleviating the environmental damages-related suffering of individuals concerned.

## 5.2.2 Cultural Objects

The Ministry of Culture and Information Policy has developed methodologies for the damage assessment and the valuation of damaged and destroyed cultural objects which, [at the time of preparation of this Section of the report], were expected to be approved in September 2023. For the calculation of the damage to large numbers of museum items, there are not enough experts, and the Ministry also appears not to have access anymore to cultural objects services. While it does receive support from international partners, and uses a United Nations Educational, Scientific and Cultural Organisation (UNESCO) format to the extent applicable, it is seeking more international assistance and expertise in this respect.

A special feature of damage and destruction of cultural objects and objects of cultural heritage is the impact it may have not only on the institutions that hold them, but on the wider community and possibly even on the country as a whole. While “moral damage” in this sense can, depending on the type and significance of the object, be severe and its impact serious, it is even more difficult to assess and quantify than “physical” damage. Guidance can be found in this respect in the Reparations Order issued by the ICC

in the *Al Mahdi* case.<sup>67</sup>

**Recommendation 1:** The Ministry should identify which cultural objects and objects of cultural heritage have been damaged or destroyed through the aggression of the Russian Federation that qualify as the kind of objects that the ICC identified in the *Al Mahdi* case.

**Recommendation 2:** The Ministry should, with the assistance of relevant experts, develop special methodologies appropriate for the assessment of such damage and destruction, as well as for the determination of the types and amounts of reparations and the beneficiaries. A designated part of the additional funding for the Ministry should be allocated for this purpose.

### 5.2.3 Reimbursement Claim by the State of Ukraine

The Government of Ukraine indicated its intention to file one or more claims with the Register of Damage in which it would, *inter alia*, seek the payment by the Russian Federation of the costs it is expending on the programmes. To determine the total volume of damage and loss caused by the aggression of the Russian Federation, damage and loss assessment methods are provided for in CMU Regulation No. 326. To enable the calculation of the amount of “human losses and the related social costs”, the Ministry of Social Policy has drafted an Order in accordance with CMU Regulation No. 326 which would establish an elaborate reporting mechanism. According to this system, the Ministries and public authorities concerned shall submit quarterly reports to the Ministry of Social Policy with data for their respective areas, based on detailed formulas set out in the Order. Calculations based on the valuation methodologies that have been discussed in this section would feed into the reports to be submitted pursuant to the draft Order.

**Recommendation 1:** The valuation methodologies applied in the Ukrainian programmes do not need to be identical to those that the future international Compensation Mechanism will apply. They should be appropriate to the damages and losses covered in the respective programme and should draw on international standards, including the case-law of the European Court and consequently from reparations

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<sup>67</sup> Mr. Al Mahdi was convicted of intentionally directing attacks against religious and historic buildings in the city of Timbuktu in Mali. The ICC highlighted the importance of cultural heritage stressing that, because of their purpose and symbolism, most cultural property and cultural heritage are unique and of sentimental value. Their destruction thus carries a message of terror and helplessness, destroys part of humanity's shared memory and collective consciousness, and renders humanity unable to transmit its values and knowledge to future generations. The ICC awarded reparations for damage to the attacked historic and religious buildings, consequential economic loss, and moral harm. Reparations were to be collective for rehabilitation of the sites and for the community of Timbuktu as a whole to address the financial loss and economic harm as well as the emotional distress suffered as a result of the attack.

practices stemming from the process of execution of judgments of the Court, should be clear and transparent and should be applied consistently.

**Recommendation 2:** On the other hand, and without prejudice to any position which may be taken by the Register of Damage and/or the future Compensation Mechanism, the national authorities should keep in mind that the latter could possibly consider the damage assessments, valuations and methodologies used in the domestic mechanisms as relevant factors to consider in its own assessments and valuations. It would therefore be important to ensure that methodologies and techniques used in domestic mechanisms are aligned as much as possible with international standards and practice.

**Recommendation 3:** For the quantification of “moral damage” in connection with damage to or destruction of cultural objects and cultural heritage (and possibly for other damage valuations), the Ministry of Culture (and where applicable the implementers of other compensatory programmes) should look for guidance in the Reparations Order issued by the ICC in the *Al Mahdi* case.

## 6 REMEDIES AND REPARATIONS IN CRIMINAL AND CIVIL LAW CONTEXTS

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### 6.1 *Effective Investigation of Atrocity/War/Conflict-related Crimes*

#### 6.1.1 Criminal Law and Procedural Framework

Any response in the criminal justice chain derives from the effective investigation and ensued procedural and other positive obligations, as well as the duty to provide relevant (immediate) reparations. The competent authorities' duties are triggered by sufficient indications that serious human rights or other relevant violations might have occurred: they are to be discharged without an advanced corroboration of violations.<sup>68</sup> The same applies to the duty to search and other measures undertaken to clarify the whereabouts of fate and keep the next of kin of a missing person appropriately informed.<sup>69</sup> The legislative and institutional arrangements in the course of the current phase of the aggression included reinforcement of the Office of the Prosecutor General, its War Crimes Department, introductions of relevant units in the front-line adjacent regional Public Prosecutor's Offices, relevant adjustment of the Ministry of Internal Affairs, National Police, State Security Service, State Bureau of Investigations and other investigative or operative and support structures. The developments also involved the advancement of the amended legislation-based co-operation with the ICC (office of its Prosecutor), other international mechanisms and organisations, as well as the advancement of horizontal co-operation with relevant state jurisdictions in the format of Joint Investigative Team(s) and other initiatives.

Investigation of war and other international crimes, prosecution and eventual conviction of individual perpetrators could be combined with proceeding with (an optional for a recognised victim) civil claim and protection of participants of criminal proceedings.<sup>70</sup>

There is no exhaustive concept that would define the aggression-related crimes.<sup>71</sup> According to the

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<sup>68</sup> See Para. 2 of Chapter V of 2011 [Guidelines of the Committee of Ministers of the Council of Europe on Eradicating impunity for serious human rights violations](#) (*"Where an arguable claim is made, or the authorities have reasonable grounds to suspect that a serious human rights violation has occurred, the authorities must commence an investigation on their own initiative"*).

<sup>69</sup> See above Section 3.1.3.5 of this Report.

<sup>70</sup> Criminal Code of Ukraine of 16 January 2003, No. 435-IV (the CC of Ukraine), the Code of Criminal Procedure of Ukraine of 13 April 2012, No. 4651-VI (the CCP of Ukraine), the Law of Ukraine "On ensuring security of persons which participate in criminal justice", the Law of Ukraine "On operative and search activities" as well as special laws regulating the constitution and functioning of the OPG and specific law-enforcement and investigative agencies.

<sup>71</sup> These are registered and processed primarily as crimes envisaged by Article 438 ("Violation of laws and customs of war"). They are also cumulatively or separately processed as the *corpus delicti* corresponding to the international crimes, falling under Articles 436 "Propaganda of war", Article 437 "Planning, preparing, waging and conducting aggressive war", Article 442 "Genocide" of the CC.

statistics of the Office of the Prosecutor General,<sup>72</sup> which suggests a structure of crimes regarded as related to the aggression, there were 108,547 crimes (criminal proceedings) registered under this group. In addition, according to the same data, the scope of the crimes in issue concern Articles 110-111, 113 of the Criminal Code providing for the criminal responsibility for infringement of territorial integrity; treason, collaborating with and aiding an aggressor state and some other crimes against national security. There were 16,452 proceedings/crimes registered under this group accordingly.<sup>73</sup> Moreover, some procedures and relevant crimes are registered also as falling under Article 432 – Looting and other criminal offences against the established order of performing military service – included in Chapter XIX of the Criminal Code.

At the same time, apart from the growing data on different types of damages, it is worth indicating that from 24 February 2022 to 10 September 2023 [at the time of preparation of this Section of the report], the Office of the United Nations High Commissioner for Human Rights (OHCHR) recorded 27,149 civilian casualties in Ukraine: 9,614 killed and 17,535 injured.<sup>74</sup> According to the OHCHR, the number of casualties is considered to be much higher.

Apart from the consistency of the scope of *corpus delicti* regarded as crimes committed in the context at issue, the statistics are to be assessed in terms of interrelation between the proceedings (cases) initiated and crimes and criminal incidents committed, not to mention the number of (potential) victims. Many cases, including so-called key proceedings (e.g., on the crime of aggression or forcible transfer of children etc.) concern and comprise multiple (thousands of other indications and evidence of) incidents and victims.

Substantial disparities still exist in Ukrainian criminal law concerning war crimes and other international crimes when compared to the Rome Statute. These differences are vital for determining eligibility under the Register of Damage and ensuring synchronisation with reparations mechanisms. Moreover, the policy and methodological instruments, including the recently adopted Strategic Plan on the Implementation of Powers of the General Prosecutor's Office in the Area of Prosecution of International Crimes for 2023-

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<sup>72</sup> <https://www.gp.gov.ua/en> accessed on 26.09.2023.

<sup>73</sup> *Ibid.*

<sup>74</sup> According to the OHCHR the number of casualties is much higher. These and other data, as well as overall and criminological estimates, which include the variety of composite or cumulative crimes and incidents, suggest that the total number of indications of the crimes in issue would exceed hundreds of thousands, if not millions. See <https://www.ohchr.org/en/news/2023/09/ukraine-civilian-casualty-update-11-september-2023>

2025,<sup>75</sup> as well as their investigation standards<sup>76</sup> suggest limited, primarily procedural and general victim protection and assistance principles and omit to properly address the issues concerned with the damages and their corroboration.

In addition to relief measures, illegally detained, as well as missing persons, killed, injured and other categories of civilians, including their next of kin, and other civilians similarly affected by the aggression are to be specifically protected and benefit from effective investigation and ensued procedural and other positive obligations to be discharged by Ukraine. Relevant measures are to be undertaken without an advanced corroboration of violations and fall under the category of immediate obligations of Ukraine.<sup>77</sup>

**Recommendation 1:** The Office of the Prosecutor General should consider developing a more consistent and comprehensive system of statistics as to crimes and procedures registered in the context of the Russian aggression, which would be crucial for proper steering and development of the domestic and international reparations mechanisms and entire framework.

**Recommendation 2:** It is recommended to proceed with further material-law, procedural legislative and institutional developments concerned with the criminal justice chain response to the atrocities, relevant war and other international crimes, conflict-related serious human rights violations particularly addressing any remaining discrepancies between the Ukrainian criminal legislation and Rome Statute, relevant IHL provisions with regard to the crime of aggression and other international crimes accordingly.<sup>78</sup>

**Recommendation 3:** There would be a need to advance the relevant policy, standard operating procedures (SOPs) or other methodological instruments, to provide uniform guidance and indications as to the investigative and overall criminal procedure-based corroboration of the damages and other harm

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<sup>75</sup>Approved by the Prosecutor General on 15 September 2023, see <https://www.gp.gov.ua/ua/posts/strategicnij-plan-shhodo-realizaciyi-povnovazen-organiv-prokuraturi-u-sferi-kriminalnogo-peresliduvannya-za-vcinennya-miznarodnix-zlociniv-na-2023-2025-roki>.

<sup>76</sup> See <https://www.gp.gov.ua/ua/posts/prokurori-ofisu-genprokurora-spilno-z-ekspertami-rozrobili-standarti-rozsliduvannya-vojennix-zlociniv> with further references.

<sup>77</sup> See Para. 2 of Chapter V of 2011 Guidelines of the Committee of Ministers of the Council of Europe on Eradicating impunity for serious human rights violations and *supra* note accordingly.

<sup>78</sup> The Council of Europe Opinion assessed the Draft Law of Ukraine 7290 “of Ukraine Amending the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine, and some other laws”. The Draft Law aims to bring the Criminal Code of Ukraine in line with international law and make provisions for the prosecution of international crimes (genocide, the crime of aggression, crimes against humanity, and war crimes). The Council of Europe opinion primarily examined the compatibility of the amendments proposed in the Draft Law with the European Convention and, in particular, its prohibition of punishment without law in Article 7. It also analyses certain aspects of the provisions as they relate to international criminal and humanitarian law. Its recommendations are of direct relevance for the Recommendation at stake.



sustained by individuals, legal or state, municipal and other entities.

**Recommendation 4:** If considered necessary to claim the related expenses from the Russian Federation<sup>79</sup> and to initiate early preparations for this purpose, it would be advisable to collect, and structure individualised and comprehensive data concerning the various costs associated with fulfilling investigative and subsequent procedural, search, and other related obligations.

## **6.2 Criminal Procedures-driven and Other Relevant Assistance for Victims**

### **6.2.1 Victims' Rights and Status under Criminal Procedure**

According to Article 55 of the Code of Criminal Procedure, a victim in criminal proceedings is an individual who has suffered moral, physical, or material damages from a criminal offence. The victim's rights and obligations arise upon filing an application regarding a crime committed against them or by filing a relevant motion to participate in the proceedings as a victim at later stages. A person can be recognised as a victim even without an application being filed, but only with their consent.<sup>80</sup>

Criminal proceedings begin when an investigator or prosecutor (required to do so within 24 hours) registers a criminal offense that might have happened in the Unified Register of Pre-trial Investigations, managed by the Office of the Prosecutor General. However, there is no centralised automated gender disaggregated data collection system for the total number of recognised victims in these proceedings.

According to Article 61 of Code of Criminal Procedure, persons who have suffered moral or material damages and legal entities that suffered material damages have the right to file civil claims within criminal proceedings and can obtain the status of a plaintiff with similar entitlements as victims. The Code of Criminal Procedure defines that damage caused to a victim as a result of a criminal offence shall be compensated from the State Budget of Ukraine in cases and following the procedure stipulated by law. The same provision is stipulated in Article 1177 (Part 2) of the Civil Code of Ukraine. Both echo Article 56 of the Constitution of Ukraine.

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<sup>79</sup> The investigation and other costs incurred regarding the discharge of the obligations owed to the victims are to be differentiated from the administrative, including valuation, expenses in the course of preparation of pursuing claims by governmental employees/structures, which might not be considered reparable based on international, including UNCC, practice.

<sup>80</sup> If a person has died or suffers from a condition when he/she cannot lodge an application on his/her own, his/her close relatives and family members may apply for victim status and benefit from the procedural rights accordingly.

In addition to seeking damages from convicted persons, the legal framework allows for the possibility of seeking compensation for certain damages from the state of Ukraine. However, there have been no recent completed criminal cases resulting in convictions for the relevant crimes committed since 24 February 2022, in conjunction with civil claims against the state of Ukraine.

Taking into account the court practice, in particular the Ruling of the Grand Chamber of the Supreme Court as to seeking compensation from the state for a property stolen from the claimant during the anti-terrorist operation regime,<sup>81</sup> it is to be expected that without a specific law or other regulations providing for the grounds engaging responsibility of Ukraine, there are low chances to succeed with seeking compensation from it, and not the immediate perpetrator/convicted. At the same time, the Grand Chamber's decision<sup>82</sup> suggests that this kind of claims could be successful if a plaintiff is able to substantiate and prove a breach of positive obligations on the part of Ukraine.<sup>83</sup>

Civil claims against convicted individual perpetrators of the crimes concerned have limited potential for actual reparations, often focusing on satisfaction and non-repetition or other non-pecuniary aspects. Additionally, most trials are conducted *in absentia* or involve convicts being exchanged, further diminishing the prospects for obtaining compensation from individual perpetrators.<sup>84</sup>

## 6.2.2 Criminal Procedure-based Support Mechanism

There is a system of handling criminal procedure-related reparations and other assistance for victims that is being advanced by the Office of the Prosecutor General. It is done based on the Concept on the Mechanism Concerning the Support to the victims and Witnesses of War Crimes and other International Crimes (Victims Support Mechanism), approved by the Prosecutor General's Order No 103 on 11 April 2023. The Victims Support Mechanism is driven by the Coordination Center for Support of Victims and Witnesses, an independent structural unit within OPG.

The Victims Support Mechanism, facilitated and processed by the Register of Victims and Survivors,<sup>85</sup> is being designed for the purposes of introducing a wider and more flexible range of protection measures

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<sup>81</sup> Ruling of 22 September 2020, case No. 910/378/19 <https://reyestr.court.gov.ua/Review/92270718>

<sup>82</sup> In particular, its para 8.4.

<sup>83</sup> Further examination of the issue, including ECtHR case-law with respect to specific human rights, pecuniary and non-pecuniary damages, that requires further research and analysis, as well as relevant resources, exceeds the scope of this assessment and report.

<sup>84</sup> It is to be noted at the same time, that the current report and assessment focus on the state obligations and responsibility-based mechanisms.

<sup>85</sup> See Section 4.2.

aimed at ensuring the physical security of the category of persons concerned. The mechanism pursues the purpose to protect them from secondary and repeated victimisation, revenge, and intimidation and to provide them support necessary for their rehabilitation from negative experiences they lived through. It will adopt an individualised approach considering personal characteristics, type, and specific circumstances of a criminal offence. It is envisaged to focus on the protection of the elderly, juveniles, persons with special needs, victims and witnesses of conflict-related sexual violence, who are predominantly women, and other vulnerable categories ensuring better access to justice to the most vulnerable.

In addition, the Office of the Prosecutor General has developed a targeted mechanism addressing the specifics of CRSV and its victims. A tailored “Victim and witness-oriented strategy for the prosecution of CRSV crimes”, adopted by the Prosecutor General in October 2022,<sup>86</sup> aims at removing the obstacles preventing CRSV victims from accessing justice, providing victims with the necessary attention and support, and contributing to the safe participation of victims and witnesses in the criminal justice process for the identification and prosecution of persons who have committed CRSV.

The Victims Support Mechanism offers a suitable solution to shift the domestic assistance system towards a more victim-centred approach from the current focus on primarily on compensation and Russian Federation responsibility-oriented character. It achieves this by enhancing, consolidating, and co-ordinating various support measures, including CRSV, survivors and victims’ support initiatives.

In this context, it is worth noting that the draft Law on Victims of Sexual Violence Related to the Armed Aggression of the Russian Federation Against Ukraine and Urgent Interim Reparations has been recently registered in the Parliament of Ukraine.<sup>87</sup> The draft Law defines the legal status of CRSV victims and family members of such deceased victims and determines the legal basis for providing them with immediate interim reparations. The draft Law itself is an important initiative aimed to address properly the conflict-related damages faced predominantly by women and girls. However, particular provisions of the draft Law should be carefully analysed considering the best interests of the victims and survivors. Notably, the draft Law introduces the Commission on Recognition of CRSV Victims to be established and co-ordinated by the

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<sup>86</sup> See <https://www.gp.gov.ua/ua/posts/prokuror-ne-obvinuvac-a-zaxisnik-postrazdalix-v-ofisi-genprokurora-prezentovali-novi-pidxodi-do-vedennya-sprav-shhodo-seksualnogo-nasilstva-povyazanogo-z-konfliktom>.

<sup>87</sup> See [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=76965](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=76965).

Ministry of Social Policy. The Commission will grant the status of a victim of sexual violence committed during the armed aggression of the Russian Federation against Ukraine and the status of the deceased victim's family members following the inquiry procedure. It would be advisable to avoid re-traumatisation of the CRSV victims and survivors, and duplication of the regular investigations/prosecution of CRSV cases, which the competent authorities, as well as international mechanisms (including the ICC) are under the obligation to carry out or proceeding with.

At the same time, authorities should consider revising its reservation to Article 30 para. 2 of the Council of Europe (Istanbul) Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210) to ensure that it aligns with the best interests of victims and survivors of CRSV. This provision imposes a subsidiary obligation on the state to provide compensation for serious bodily injury or impairment of health, when other sources of compensation, including the perpetrator, are not available. Considering Ukraine's commitment to addressing conflict-related damages, particularly those suffered by women and girls, it is essential to provide effective and comprehensive remedies and redress mechanisms.

**Recommendation:** There is a need to proceed with the victims-centred advancement of the entire system of domestic assistance mechanisms to balance its current selective and primarily compensatory and the Russian Federation's responsibility-oriented character through enhancement, as well as consolidation and co-ordination of the multiple, including CRSV, survivors' and victims' support initiatives, with the Victims Support Mechanism and relevant interoperable data management system (register) regarded as a legally and institutionally suitable solution.

### **6.3 Civil and Other Judicial Remedies for Seeking Compensation from State(s)<sup>88</sup>**

Both the Ukrainian legislation<sup>89</sup> and the international legal framework, in particular the European Convention (notably the right to an effective remedy), constitute the fundamental basis for pursuing domestic judicial remedies to seek compensation for damages caused during the aggression— from the

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<sup>88</sup> As discussed, the legal openings for seeking compensation of damages from physical persons or legal entities other than states do not fall under the remit of the current assessment.

<sup>89</sup> The key norms of the Civil Code providing for damage caused as a result of a tort comprise Article 22 as to compensation for losses and other ways of compensation for property/material damage; Article 23 as to compensation for moral damage; Article 1166 on general grounds for liability for property damage; Article 1167 grounds for liability for moral damage.

State of Ukraine or the Russian Federation. The established judicial practice primarily relates to claims and procedures concerning damages that occurred prior to the current phase of the aggression.

### 6.3.1 Claims Against Ukraine

Several provisions, notably Articles 1173-1177 of the Civil Code, outline the compensation of damages by the state of Ukraine in cases where the damages can be attributed to illegal decisions, actions, or inaction of state authorities or bodies, including those in the Republic of Crimea or self-governance bodies. They establish obligations to compensate for damages by the relevant bodies regardless of the guilt of the bodies or their officials, including in cases of wrongful conviction, decisions of pre-trial and law enforcement agencies, wrongful actions, or inactions. They also establish the obligation to compensate for damages caused by a crime.<sup>90</sup>

Attempts to proceed on this basis have involved invoking similar provisions from the Law on Civil Defence of Ukraine, the Law on “Combating Terrorism,” as well as Article 1 of Protocol No. 1 to the European Convention in specific civil cases related to damages incurred during the preceding phase of military operations and occupation occurred before 24 February 2022.<sup>91</sup> When upholding the decisions of the first and second instance courts regarding compensation for damages caused by military operations (shelling) in 2014, the Supreme Court extensively referenced Article 1 of Protocol No. 1 to the European Convention, along with the case-law of the European Court, suggesting that it extends over the context in issue. A prior decision by the Grand Chamber of the Supreme Court<sup>92</sup> indicated that Article 1 of Protocol No. 1 provides for a positive obligation of the state to introduce compensation mechanism(s) and secure the peaceful enjoyment of possessions. This includes conducting effective investigations. However, it is important to distinguish this from the responsibility for breaching negative obligations. In this specific case, such responsibilities were not established with respect to the state of Ukraine. It is expected that they should not apply to most similar incidents or other aggression-related atrocities.

However, the court practice, as advanced by the Supreme Court in this regard, suggests that the right to property under Article 1 of Protocol No. 1 to the European Convention involves the duty to establish the mechanism(s) for compensating the damages by the state, including in the context of armed conflict or

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<sup>90</sup> See also Section 6.2.1 above.

<sup>91</sup> See the ruling of the Supreme Court, 27 October 2021 in case No. 243/5286/17 <https://reyestr.court.gov.ua/Review/100816878>

<sup>92</sup> Ruling in case No. 265/6582/16-ц of 4 September 2019, para. 71. <https://reyestr.court.gov.ua/Review/86310215>

military operations, is to be carefully assessed in terms of its scope, if viewed as a domestic standard and correlation with international norms and requirements accordingly.

**Recommendation 1:** It would be advisable to carefully assess the court practice, as advanced by the Supreme Court, suggesting that the right to property under Article 1 of Protocol No. 1 to the European Convention involves the duty to establish mechanism(s) for compensating the damages by the state, including in the context of armed conflict or military operations, in terms of its scope, if viewed as a domestic standard and correlation with international norms and requirements accordingly.

**Recommendation 2:** It would be advisable to consider providing capacity-building and methodological support to the judiciary to help them better understand the scope of positive obligations, including procedural aspects, and Ukraine's corresponding responsibilities. This should also cover the potential range of pecuniary and non-pecuniary damages and compensation (just satisfaction) related to the various rights at stake including access to justice for victims of conflict-related violence against women.

**Recommendation 3:** As the administrative compensatory and relief mechanisms gradually expand, this will involve the development of relevant judicial practice (within the administrative jurisdiction) regarding the decisions of the bodies<sup>93</sup> in charge. This should be accompanied by efforts to enhance capacity and provide the necessary methodological support to facilitate this development effectively.

### 6.3.2 Claims Against the Russian Federation

The international legal framework, which encompasses the principles of state responsibility, including the human rights law, the European Convention, the case-law of the European Court regarding state-agent authority and effective control-based extraterritorial application,<sup>94</sup> along with customary international law and relevant provisions of IHL, when combined with domestic legislation, provide grounds for invoking the liability of the Russian Federation for damages stemming from the aggression.

The Supreme Court (cassation instance) has not yet delivered any decision pertaining to claims against the Russian Federation concerning damages suffered during the ongoing phase of the aggression.

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<sup>93</sup> See Ruling of the Supreme Court of 24 September 2023 <https://reyestr.court.gov.ua/Review/108594040>.

<sup>94</sup> See *Georgia v. Russia (II)*, ECtHR [GC] judgment (just satisfaction) of 21 January 2021, appl. no. 38263/08, paras. 81-84, 106-175 (with further references).

The procedural grounds and state immunity-related considerations require a careful reassessment, particularly considering recent Supreme Court decisions<sup>95</sup> (putting forth arguments to gain broader support and international recognition, well-established principles, including customary law, as well as the Council of Europe standards on the right to an effective remedy) that deviate from previous practice.<sup>96</sup> These decisions depart from Article 79 of the Law of Ukraine “On the International Private Law,” which mirrors international rules on state judicial immunity and requires explicit consent from the competent authorities of a foreign state for its involvement in domestic litigation, unless specified differently in international treaties or Ukrainian laws. The arguments advanced by the Supreme Court could be seen as deserving support. Nevertheless, they are to be upheld by other jurisdictions and internationally so that relevant well-established principles, including of the customary law, is reviewed. Without this time-consuming development,<sup>97</sup> the move could be regarded as questionable.

Discussions with stakeholders have revealed their awareness of the complexities involved. Some have suggested minimising the legal importance of domestic litigation and final judicial decisions in these cases, treating them as advanced evidentiary items for use in future international or horizontal judicial proceedings and reparations mechanisms. However, even the evidentiary value of the court decisions rendered in the circumstances would be uncertain. These considerations, in turn, should raise concerns as to efficiency of spending judicial and other capacities and resources for this purpose.

In addition, there are serious misgivings with regard to perspectives of enforcement of the final decisions on the domestic level under the current legislation and resources available. Moreover, if future regulations will provide for some prioritisation of the category of claims in issue for the purposes of domestic compensatory mechanisms, disbursement of funds, seized assets etc., they will raise serious concerns as to legal certainty and relevant fairness considerations, as well as discrimination of destitute, vulnerable (including those mostly affected by the combat operations) or otherwise disadvantaged victims.

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<sup>95</sup> Ruling 14 April 2022 in case No. 308/9708/19 <https://reyestr.court.gov.ua/Review/89509134>.

<sup>96</sup> The International Court of Justice case on Alleged Violations of State Immunities (Islamic Republic of Iran v. Canada) is a legal dispute brought before the International Court of Justice (ICJ) concerning allegations of violations of state immunities. In this case, the Islamic Republic of Iran has raised claims against Canada related to issues of state immunity under international law. The ICJ will adjudicate the matter and provide a ruling on the issues raised: <https://www.icj-cij.org/case/189>.

<sup>97</sup> [With just one of the steps in this regard being expected in the International Court of Justice case on Alleged Violations of State Immunities \(Islamic Republic of Iran v. Canada\).](#)

**Recommendation:** In full respect of the principle of judicial independence, it would be important to foster discussions and reflection with relevant professionals on the judicial practice relating to the removal of state immunity of the Russian Federation for the purposes of domestic procedures.



## 7 INVOLVEMENT OF VICTIMS, CIVIL SOCIETY AND NGOS

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### 7.1 *Victims, Civil Society and NGOs and a Victim-centred Approach*

The right to reparation and assistance of individual victims of gross violations of international human rights law and of serious violations of IHL is well recognised.<sup>98</sup> Given that reparation and assistance mechanisms are established for the benefit of victims and that victims are thus at the core of such efforts, a corollary of this right is the obligation to make such mechanisms victim-centred and enable as much as possible involvement of the victims in their design, establishment and implementation.

Several documents and pronouncements have confirmed this principle and have called for the application of a victim-centred approach in the reparation and assistance programmes for war-affected people in Ukraine. The most recent statement in this respect is contained in the “Riga Principles” concerning avenues to “effectively achieve comprehensive accountability, including the focused and efficient functioning of the Register of Damage”, which the Ministers of Justice of Member and observer States of the Council of Europe adopted at their informal conference in Riga on 11 September 2023.<sup>99</sup>

In a similar vein, while sceptical about the possibilities of meaningful and sustained victim consultations under the current conditions of ongoing conflict,<sup>100</sup> the Commission of Inquiry in its latest report emphasised that certain initiatives can be started, the first of which should be a victim registry.<sup>101</sup> The Commission recommended that States and regional and international organisations support the effective participation of civil society and victims’ and survivors’ groups in accountability mechanisms.<sup>102</sup>

Redress and the Global Survivors Fund emphasised in a recent Briefing Paper that a “survivor-centric approach and co-creation of the reparations framework with survivors themselves in Ukraine will require tailoring the delivery of reparations to the specific needs of victims, including urgent needs, and a comprehensive consultation process”.<sup>103</sup> Such a comprehensive consultation process was a key basis, for

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<sup>98</sup> See, for instance, the report of the Independent International Commission of Inquiry on Ukraine (“Commission of Inquiry”) to the Human Rights Council, UN Doc. A/HRC/52/CRP.4, para. 955: “The growing body of jurisprudence on both the substantive and procedural dimensions of the right to reparations demonstrates the consolidation of the victims’ right to reparation in international law”.

<sup>99</sup> They invited Member and observer States to consider, inter alia, a victim-centred approach and stated further that “[c]ivil society and non-governmental organisations, including human rights defenders, as well as victims and victim rights organisations should be meaningfully consulted by relevant national and international bodies”. They also “commend[ed] the work of the Ukrainian Prosecutor General’s Office aiming at victim-centred approach to accountability, including through its initiative to develop a national Register of Victims and Survivors of war crimes”. See <https://rm.coe.int/moj-declaration-riga-principles-final-en/1680ac8728>

<sup>100</sup> Ibid., para. 971.

<sup>101</sup> Ibid., para. 972. The Commission conceives a victim registry “as an ‘institutional portal’ for better co-ordination of available government services to victims”, *ibid.*, para. 998 (a).

<sup>102</sup> Ibid., para. 999 (a).

<sup>103</sup> The Delivery of Reparations for Ukraine, Briefing Paper – September 2023, para. 54.

instance, for the May 2022 study by the Global Survivors Fund, Blue Bird, The Eastern-Ukrainian Center for Civic Initiatives and Truth Hounds on reparations for survivors of conflict-related sexual violence in Ukraine.<sup>104</sup> In this regard, the requirements of the Istanbul Convention shall be considered with due regard. In a Position Paper of July 2023, a wide community of Ukrainian civil society organisations and initiatives participants to the Memorandum of CSOs of Ukraine on Shared Guiding Principles on Accountability for International Crimes Committed in Ukraine demanded with respect to a future international compensation mechanism that “[a]t each stage of compensation, a victim-centred approach should be implemented – in particular, by ensuring publicity and transparency of decision-making, wide involvement of representatives of civil society in the establishment and operation of the compensation mechanism, and bringing the guilty party to justice”.<sup>105</sup>

## ***7.2 The Role of Victims, Civil Society, and NGOs in Relation to the Domestic Mechanisms in Ukraine***

While there is wide agreement that a victim-centred approach should also be applied in relation to the compensatory and other assistance programmes for war-affected people in Ukraine, its implementation in practice presents challenges. These relate to the consultation of victims; effective outreach to victims; the involvement of victims, victims’ representatives and NGOs supporting victims in the design of the programmes; and their roles in participating in the programs and their implementation. Two key factors among the many challenges are (i) the large numbers of victims and people who are affected by the Russian Federation’s aggression and who are consequently eligible to benefit from and participate in the reparation and assistance programs; and (ii) the multitude of programmes and mechanisms that need to be accessed separately and each of which have their own eligibility and evidentiary requirements that need to be met and their distinct procedures that need to be followed.

Ukraine has an active civil society where several NGOs are working with and for war-affected people. While they work within their respective mandates and areas, there is potential for greater co-ordination and common standards among these organisations. Some efforts have been made in this direction, but much of their work mirrors the fragmented reparation and assistance landscape in Ukraine. These organisations

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<sup>104</sup> Ukraine Study on the Status of and Opportunities for Reparations for Survivors of Conflict-related Sexual Violence (May 2022).

<sup>105</sup> Position Paper: Compensatory mechanisms and compensation for damages, signed by Center for Civil Liberties, Civic Education Center “Almenda”, Human Rights Center ZMINA, Institute of Legislative ideas, Regional Center for Human Rights, Stanislav Dnistrianskyi Center for Law and Policy, Truth Hounds, Ukraine Without Torture, and Ukrainian Legal Aid Foundation.

mainly assist victims in accessing compensation and aid, and while there are calls for a comprehensive support (reparations) framework, working towards that understandably is not their primary focus.

There are co-ordinated efforts involving multiple NGOs, as well as collaboration between NGOs and government at national and regional levels. The Government has launched an online platform with information on services that provide social, legal, and psychological support to war victims,<sup>106</sup> including details about relevant NGOs. Co-ordination centres for the support to civilian population, established as per CMU Resolution No. 470 of 9 May 2023 include, in addition to representatives of government bodies and local self-governments, also representatives of civil society organisations and international humanitarian organisations.<sup>107</sup> The centres facilitate co-ordination among stakeholders, collect information on urgent needs and challenges of war-affected people, and develop proposals to address these challenges. Recommendations of the participants are shared with the Ministry of Reintegration. The centres may thus be a tool through which the views of relevant organisations can reach relevant government entities at the different levels.

Most of the NGOs who participated in the interviews referred to the often-extensive repositories of information and data that each one of them collects and maintains in the course of their respective work with and for war-affected people. Much of this information and data is obtained in the context of the investigation and documentation of war crimes, and some of it is shared with the Office of the Prosecutor General. Finally, it was reported that municipalities also maintain similar information about events in their areas, sometimes still on Excel spreadsheets.

Efficiently implementing various compensatory and other assistance programmes in Ukraine could greatly benefit from supplementing information and evidence provided by applicants with data from external sources, including NGOs. This victim-friendly approach acknowledges the challenges faced by applicants, many of whom have been displaced and may struggle to access or retrieve necessary evidence. Ideally, these mechanisms should be able to access a single consolidated database, streamlining the process instead of having to collect information from numerous repositories.

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<sup>106</sup> The Delivery of Reparations for Ukraine, Briefing Paper – September 2023, para. 55. The Platform for Assistance to Rescued Persons was created in May 2023 at the initiative of the Office of the Deputy Prime Minister for European and Euro-Atlantic Integration and with the support of the Government Commissioner for Gender Policy and the United Nations Population Fund (UNPF) in Ukraine.

<sup>107</sup> UNHCR, Ukraine Legislative Update on displacement-related legislation, May 2023.

As a first step, a mapping should be conducted on the types of relevant information and data held by NGOs, along with their formats and technical characteristics. While NGOs cannot be compelled to participate, their voluntary co-operation could be expected, as this initiative ultimately benefits their beneficiaries. Compliance with privacy and data protection laws is essential, and obtaining informed consent from data subjects is crucial. The Office of the Deputy Prime Minister for European and Euro-Atlantic Integration could provide co-ordination and support for this project, drawing from its experience in establishing the Information Platform for Assistance to Rescued Persons.

Civil society and NGOs can also play a role in representing the views and needs of victims through their participation in the working group organised by the Ombudsperson to develop a comprehensive reparations framework for Ukraine. Given the large number of NGOs involved, selecting a representative group for the working group may be challenging, which can in the circumstances only be a limited number. Thus, participating organisations should actively seek input from those not represented and provide feedback to them on the progress. This can be facilitated through existing NGO co-ordination platforms and the creation of dedicated communication channels for this purpose.

Another important role that civil society and NGOs play for victims of the Russian Federation's aggression and war-affected people is the support that they provide to them through legal aid. This support includes advice on available mechanisms and benefits, assistance in applying to the mechanisms, representation before the mechanisms and the provision of information and data to support applications.

Civil society and NGOs can play a crucial role in establishing a victim consultation process, which would be developed by the Ukrainian Government, civil society and NGOs. A Ukraine Victims Consultations Task Force would be responsible for designing the consultation methodology, drafting questions, and conducting local consultations. These activities would involve civil society and NGO members with local connections to victims to ensure better acceptability. The consultation process should be conducted with respect to a comprehensive compensatory and other assistance framework in Ukraine, as well as concerning claims before the international Register of Damage.

**Recommendation 1:** It is recommended to reinforce information exchange, co-ordination and joint input by relevant NGOs concerning the consultation of victims about the design of domestic reparations and assistance programmes, information about existing mechanisms and outreach to victims, the participation of victims in the mechanisms and programmes, and their implementation.

**Recommendation 2:** It is recommended to steer the information exchange and recommendations by co-ordination centres for the support to civilians established under CMU Resolution No. 470 of 9 May 2023.

**Recommendation 3:** It is recommended to participate in the mapping of relevant information and data maintained by NGOs, including the formats in which it is held, the technical properties of the databases and software tools used, possibly co-ordinated and supported by the Office of the Deputy Prime Minister for European and Euro-Atlantic Integration using its experience with the creation of the Information Platform for Assistance to Rescued Persons.

**Recommendation 4:** It is recommended to create or contribute to the operation of a database that consolidates the information and data about victims and damages currently distributed over many NGOs, to be used to support applications of victims to the various domestic mechanisms; in this context, applicable privacy and data protection laws need to be complied with and the informed consent of the data subjects needs to be ascertained.

**Recommendation 5:** It is crucial to enable effective participation of civil society in the working group that the Ombudsperson is organising with a view to arriving at a comprehensive reparations framework for Ukraine, and to ensure input from and feedback to those NGOs who will not be able to participate in the working group.

**Recommendation 6:** The Government of Ukraine, along with experienced international organisations and representatives from civil society and NGOs, should consider the possibility of establishing a consultation process, possibly a consultation platform, which would facilitate a comprehensive consultation process with victims, allowing them to express their needs and expectations. These consultations should cover topics such as eligible claim categories, benefits, and priorities. It is essential to manage and address victim expectations as an integral component of this process.

### ***7.3 The Role of Victims, Civil Society, and NGOs in Relation to the Register of Damage***

The calls for a victim-centred approach and victim consultations also in relation to the international Register of Damage have been set out in the Statute of the Register of Damage<sup>108</sup> itself, the “Riga

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<sup>108</sup> Statute, notably Article 3.4 (“*The Register shall also have a satellite office in Ukraine for the purpose of liaising with the Government of Ukraine and facilitating outreach and contact with potential claimants and the public at large in Ukraine, notably about the existence and purpose of the Register and the procedure for filing a claim for damage*”).

Principles” and others.<sup>109</sup>

The present report offers the following considerations in this respect. On the one hand, the Register of Damage is further distanced from the situation on the ground in Ukraine and the actors there, and it is, therefore, more difficult for victims and Ukrainian civil society and NGOs to find a way to provide input into the shaping of the Register process. On the other hand, the Register of Damage will establish a satellite office in Ukraine.<sup>110</sup> In line with the Register’s Statute, for an efficient and appropriate outreach and contact with potential claimants, the satellite office will need to co-operate with Ukrainian civil society and NGOs (keeping in mind that the Council of Europe also benefits from an Office in Ukraine and that co-operation with other relevant international organisations would also be important).

In the spirit of the “Riga Principles” and without prejudice to any decisions of the Register of Damage in this respect, it should design effective modalities for meaningful consultation and engagement of civil society and NGOs to obtain victims’ input into concerning the procedures before the Register.

**Recommendation:** The Register of Damage (without prejudice to any decisions it would take in this respect), relevant authorities and civil society and NGOs, are encouraged to engage in a consultation process enabling victims’ input about their needs and expectations concerning the procedure before the Register of Damage, including categories of eligible claims and benefits and priorities. Management of victim expectations should be an integral part of this process.

## **8 RELATIONSHIP BETWEEN THE DOMESTIC MECHANISMS AND THE REGISTER OF DAMAGE**

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### **8.1 Synchronisation Considerations**

#### **8.1.1 Differences and Their Implications**

While both systems address the consequences of the aggression of the Russian Federation against and in Ukraine, it is important for the assessment and organisation of their relationship to consider the

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<sup>109</sup> Notably the Ukraine Accountability Collaboration Platform discussion paper (UA ACP, 27 July 2023: “Advocacy concerning CoE Register of Damages”), an International Centre for Transitional Justice paper (ICTJ, ‘An International Register of Damages for Ukraine Promises Accountability, But Could Victims Be Left Behind?’, 2 June 2023), and a Position Paper by participants to the Memorandum of CSOs of Ukraine on Shared Guiding Principles on Accountability for International Crimes Committed in Ukraine (Position Paper: Compensatory mechanisms and compensation for damages, signed by Center for Civil Liberties, Civic Education Center “Almenda”, Human Rights Center ZMINA, Institute of Legislative ideas, Regional Center for Human Rights, Stanislav Dnistrianskyi Center for Law and Policy, Truth Hounds, Ukraine Without Torture, and Ukrainian Legal Aid Foundation (July 2023)).

<sup>110</sup> Statute, Article 3.4 quoted above.

differences between the domestic mechanisms in Ukraine and the Register of Damage. These differences and their implications are summarised below.

#### 8.1.1.1 *The Legal Frameworks*

The legal bases and frameworks are grounded in different legal systems. The Register of Damage is established pursuant to an Enlarged Partial Agreement within the framework of the Council of Europe and is governed by its Statute. Its founding documents confirm the “exigent necessity to ensure comprehensive accountability in the context of the Russian Federation’s aggression against Ukraine”.<sup>111</sup> The Register of Damage is created by an international agreement, and it applies the principles on reparations for victims under international state responsibility.

The relief mechanisms have been established through Ukrainian national legal instruments, primarily laws and the Cabinet of Ministers resolutions. These mechanisms pertain to damages and losses resulting from the same actions by the Russian Federation that could potentially trigger the latter’s state responsibility obligations. However, these mechanisms are rooted in Ukraine’s obligation (notably under the European Convention) to address the needs of its citizens due to the extraordinary situation caused by the aggression of the Russian Federation against Ukraine.

The differences in the legal bases and the applicable rules and principles impact the scope of the damages and losses covered and the remedies available under the two systems.

Different terminology is used in the various domestic instruments in Ukraine in connection with different eligibility criteria; they include (armed) aggression, hostilities, terroristic attacks, diversions, military operations, and similar terms. It is not clear how these criteria will be evaluated in the framework of the Register of Damage whose mandate relates to claims for damages caused by the “internationally wrongful acts” of the Russian Federation.

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<sup>111</sup> Resolution CM/Res(2023)3 adopted by the Committee of Ministers on 12 May 2023, page 1. It also recalls in this respect the 2001 Articles on Responsibility of States for Internationally Wrongful Acts, the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law which advocate for a victim-centered approach, as well as the 2011 Guidelines of the Council of Europe Committee of Ministers on Eradicating impunity for serious human rights violations. The Register of Damage’s Statute describes the Register of Damage as a first step “to ensure timely compensation for the victims of the Russian Federation’s internationally wrongful acts in or against Ukraine”.

### 8.1.1.2 *The Scope of Damages and Losses Covered and the Categories of Claims Available*

The domestic mechanisms and the Register of Damage share the goal of addressing the same damages and losses. However, they differ in legal basis and purpose, resulting in possible variations in the scope of covered damages and benefits. The categories of claims that will be eligible for inclusion in the Register of Damage have not yet been defined,<sup>112</sup> but based on the wide scope of damages covered they are likely to be comprehensive. The damages addressed by the domestic mechanisms in Ukraine and the benefits available through them, on the other hand, target specific affected groups and types of damages. While there will be some overlaps, significant differences will exist, requiring careful management of their relationship and interface.

### 8.1.1.3 *The Processes, Including Registers, Evidence and Valuation*

The differences between the two systems are most pointed in the processes they follow. This is due to the different purposes they serve, and consequently, the procedures and methods they apply in dealing with their caseloads. The task of the various mechanisms in Ukraine is a full determination of the eligibility of the applicants and a decision on the compensation or the other benefits they are entitled to, as well as the payment of compensation and the provision of other benefits. The more limited mandate of the Register of Damage is to decide whether a claim falls within one of the categories of eligible claims (to be decided by the Register itself) and whether it will be included in the Register.<sup>113</sup>

Ukraine has established separate registers and information management systems for almost each of its mechanisms, while the Register of Damage is likely to have a single database for managing all submitted claims.<sup>114</sup> For Ukraine to provide efficient support of “reimbursement” claims, it will submit to the Register of Damage,<sup>115</sup> and for the Register to have such claims accompanied by complete information and documentation, it will be important that the Ukrainian authorities and the Register of Damage co-ordinate

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<sup>112</sup> Their determination will be the task of the Conference of Participants of the Register of Damage, upon a proposal from the Board; see Statute of the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine (“Statute”), Resolution CM/Res(2023)3 adopted by the Committee of Ministers on 12 May 2023, Articles 5.3.c and 6.5.b.

<sup>113</sup> The decision on the eligibility for compensation and on the amount of compensation to be paid will be made by the future international mechanism (e.g., the Compensation Commission).

<sup>114</sup> Compare [speech](#) of the Deputy Secretary General of the Council of Europe at the 2nd meeting of the Conference of Participants of the Register of Damage (refers to the necessary “investment in the all-important digital platform that will be central to recording the damage on the ground”).

<sup>115</sup> For details of such claims, see below section 9.3.2.3.



and ensure interoperability (which is also called for by the “Riga Principles”).<sup>116</sup> This will include a decision on which language or languages these data will be required by the Register of Damage.

The evidentiary standards to be applied by the Register of Damage have not yet been determined.<sup>117</sup> It is crucial for the Government of Ukraine to anticipate and eventually co-ordinate with the Register of Damage on this matter, using a “bottom-up” construction approach for two reasons. First, this will be relevant for the types of evidence that the Government of Ukraine should submit in support of any possible “reimbursement” claims that it would file with the Register. Second, in the short term, it will be important for the Government of Ukraine to correctly and effectively inform about the documentary and other evidence required for their claims and support potential claimants before the Register of Damage. Similarly, it will facilitate outreach and assist in the preparation of claims for submission to the Register of Damage if the Government of Ukraine anticipates the methodologies that the future Compensation Mechanism will apply for the valuation of the various damages and the calculation of compensation. Some of the current mechanisms in Ukraine are using or developing their own methodologies, while others are awaiting guidance from the Register of Damage. Clarity about valuation methodologies will serve two purposes. It will explain how the amounts claimed have been determined for claims submitted to the Register of Damage and inform potential claimants about the information and evidence required to support the valuation of their claims in different categories.

**Recommendation 1:** Acknowledging that the extent of synchronization and interoperability will be contingent upon the capabilities and applicable laws, including those on data protection and evidence protection requirements, the Ukrainian Government is invited to consider appointing a dedicated entity with the authority to synchronize the documentation, valuation, and data in the various registers and their formats as much as possible (as suggested in Chapter 4.2 above), securing interoperability and/or access by the Register of Damage for Ukraine to the various registers in Ukraine (or a unified relevant Ecosystem if and when it is created) to the extent possible.

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<sup>116</sup> The “Riga Principles” <https://rm.coe.int/moj-declaration-riga-principles-final-en/1680ac8728> call for: “Coherence, Complementarity and Interoperability: With a view to a comprehensive system of redress, the coherence and complementarity of actions and methodologies for claims processing should be carried out as appropriate, including through IT tools, at the domestic level, in the operations of the Register of Damage and in other international mechanisms, enabling their interoperability”.

<sup>117</sup> Their determination will be the task of the Conference of Participants of the Register of Damage, upon a proposal from the Board; see Statute of the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine (“Statute”), Resolution CM/Res(2023)3 adopted by the Committee of Ministers on 12 May 2023, Articles 5.3.c and 6.5.b.

**Recommendation 2:** The Ukrainian Government, through a dedicated entity, should co-ordinate and agree with the Register of Damage, as early as possible, concerning protocols for the transfer of data from the registers in Ukraine so that the Register of Damage can receive and store such data most efficiently to the extent possible and with due consideration of applicable legal framework, and its potential amendment, as appropriate. This will include agreement on the language or languages in which the data should be transmitted

**Recommendation 3:** Without prejudice to the Register of Damages' ultimate decisions in this domain, the Ukrainian Government should, to the maximum extent possible, anticipate what evidentiary standards the Register of Damage (and ultimately the future Compensation Mechanism) may apply. In this respect, it could consider drawing on the practice of other claims mechanisms, such as the UNCC, that dealt with similar claims as those that will come before the Register of Damage; this would include evidentiary requirements for mass claims processing.

**Recommendation 4:** Similarly, the Ukrainian Government should, to the maximum extent possible, anticipate what valuation methodologies the future Compensation Mechanism may apply (without prejudice to any decisions the later would take). Here it could also draw on the practice of other claims mechanisms, such as the UNCC, that dealt with similar claims as those that will come before the future Compensation Mechanism; this would also include valuation methods used in the resolution of mass claims.

**Recommendation 5:** In order to reinforce the victim-centred approach, it would be necessary to ensure taking into account the domestic regulations so that they constitute the basis for constructing an upwards approach towards the Register.

## 8.1.2 Ukrainian Claimants Before the Register of Damage and Their Claims

### 8.1.2.1 *Natural Persons*

#### A. Claims for damages covered by domestic mechanisms

The Register of Damage itself has the authority to decide on all rules and regulations pertaining to the submission and eligibility of claims to be recorded in the Register.<sup>118</sup> Without prejudging the Register of

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<sup>118</sup> Statute of the Register of Damage, CM/Res(2023)3.

Damage's decisions in this respect, a natural person who has not sought relief in a domestic mechanism (or has applied for, but not received full relief) could submit a claim for damages otherwise covered by the respective Ukrainian mechanism directly to the Register of Damage. Unless the right to claim in other fora is ceded to the Government of Ukraine (or the sub-entity that provided relief), a person who has received compensation or other relief in a domestic mechanism could submit a claim directly to the Register of Damage. However, to avoid double recovery, the Register would have to check whether relief has been provided by Ukraine (in full or in part) for the same damage. For this check, the Register would need access to the information and data in the respective Ukrainian register, or the unified register (a unified relevant Ecosystem) if it is created. The Register could (without prejudging its decisions) admit the claim to the extent that it seeks compensation or other relief beyond what has been awarded by the domestic mechanism, but only if such a claim belongs to a category that is in principle eligible to be recorded in the Register.

Should the right to claim in other fora for the same damages be ceded to the Government of Ukraine (or the self-governance body concerned), a direct claim for such damages by the person concerned would (without prejudging its decisions) not be admissible before the Register of Damage. In this case, the Government of Ukraine (or the self-governance body concerned) could include the cost it incurred for the compensation of this damage in a "reimbursement" claim against the Russian Federation before the Register of Damage.

*The following recommendations are not prejudging the future rules and regulations, nor any decisions that will be adopted by the Register of Damage by virtue of its competences.*

**Recommendation 1:** Information on compensation or other relief received in a domestic Ukrainian mechanism should be made verifiable by means of interoperability of the domestic and international registers.

**Recommendation 2:** It is advisable to establish early co-ordination with the Register of Damage to determine protocols, language, structure, and technical parameters for transferring data from Ukrainian registers. This would ensure that the Register can efficiently receive and store such data.

**Recommendation 3:** It should be examined (preferably through a single focal point) whether, and under what conditions, Ukraine would be ready to assist in the collection of claims by natural persons and businesses (legal entities) in the country and their transmittal to the Register of Damages, as well as on

structuring their categories, providing for particularities of environmental and other specific claims, including by formalising their agreement and providing the relevant information and instructions in the outreach to potential claimants as soon as possible.

**Recommendation 4:** The Government of Ukraine should introduce provisions and procedures with relevant uniform (template) arrangements in terms of ceding (transfer) the right to claim compensation from the Russian Federation for the same damage(s) to the Government of Ukraine or self-governance bodies (depending on the source of assistance provided) for all the mechanisms concerned.

B. Claims for damages not covered by domestic mechanisms

Without prejudging the Register of Damage's decisions in this respect, claims by natural persons for damages or losses not covered (or not fully covered) by a domestic mechanism in Ukraine should be admissible for direct submission to the Register of Damage by the person concerned.

8.1.2.2 *Businesses*

No mechanism exists yet in Ukraine for the compensation of business losses, whether incurred by private legal entities or unincorporated businesses. Unless and until such a mechanism is established, claims for business losses can be submitted only to the Register of Damage.

8.1.2.3 *The Government of Ukraine / Self-governing Bodies*

A. "Reimbursement" claims

Without prejudging its decisions in this respect, through "reimbursement" claims before the Register of Damage, the Ukrainian Government (and possibly self-governing bodies) could seek compensation from the Russian Federation for the costs of the relief they are providing to persons who suffered loss or damage caused by the Russian Federation's aggression against and in Ukraine.

To support any such "reimbursement" claim(s), a dedicated entity within the Government should prepare an overview of all the domestic mechanisms, with a description of the bodies responsible, the procedures used, the applications submitted, the benefits awarded, and the payments made. Access to the data in the various registers would be required for this entity, and the task would be greatly facilitated if a unified register of damages and victims (a unified relevant Ecosystem) would be created on which the entity could rely.

The Methodology for the Calculation of Losses and Damages of Persons drafted by the Ministry of Social Policy is intended to bring together the relevant data and statistics and as such provide the “raw data” for any “reimbursement” claim(s) with respect to human losses and injuries.

The Government of Ukraine would also need to co-ordinate with the Register of Damage in what format any “reimbursement” claim(s) should be submitted, what documentary evidence would be required, what electronic data should be made available and what protocols for their transmittal or access would be needed, and in what language or languages the claim/s and the evidence should be submitted.

**Recommendation:** Without pre-judging its decisions in this respect, the Government of Ukraine should decide as soon as possible on the structure of the Government’s claim(s) (including possibly attempting to submit one consolidated claim) to the Register of Damage, by which it would seek reimbursement of the costs incurred by all relevant entities (ministries and self-governance bodies), or whether the only realistic option would be for each respective ministry (and possibly self-governance body) to submit a claim seeking reimbursement of its respective expenses.

#### B. Public sector claims of the State of Ukraine and its sub-divisions

Given the massive scale of the damages and losses and the fact that they continue to be inflicted, the preparation, valuation and submission of claims will pose significant challenges and demand substantial resources and expert support. The methods and techniques employed by the UNCC in evaluating and resolving similar large-scale claims offer valuable insights and tools that Ukraine can leverage in the preparation of its public sector claims.

When it comes to environmental damage, the UNCC remains the mechanism with the most extensive and comprehensive experience. Considering their special features, it is likely that for environmental claims, the Government of Ukraine and the Register of Damage may need to enter specific arrangements concerning the form and contents of the claims, the evidence, and valuations to accompany them, and the format of their submission.

## 9 CONCLUSIONS

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The expanding complex, multi-layered and composite domestic framework of tailored relief mechanisms introduced in Ukraine for civilians affected by the current phase of the Russian Federation's aggression addresses only limited (established or assumed) types of enormous and expanding scope of damages and categories of war-affected people. The measures primarily provide partial (fixed) monetary compensation or otherwise alleviate the loss of life, disability, and other health impairments caused by military impacts; internal displacement and related social hurdles; certain damages caused to housing and some pecuniary losses. Moreover, most measures are made available or prioritised based on territorial criteria or conditioned by the engagement of individuals in resisting the Russian aggression or mitigating its consequences.

The gradual expansion and improvement of the domestic system of relief initiatives, offering targeted assistance and providing domestic procedural remedies and reparations to individuals affected by the aggression introduced in Ukraine, is commendable. This aims at complying with the obligation to provide all possible assistance and support to the victims of gross violations of international human rights law and serious violations of IHL by the authorities that are not responsible for these violations and not bound by the state responsibility-based obligations to provide full reparations (pending decisions as to reparations with respect to the liability of the Russian Federation). While the limitations and some deficiencies of the system may be attributed to the scale and nature of the related atrocities, corollary dynamics, budgetary, institutional, and other constraints, it is advisable to intensify efforts to overcome its considerable fragmentation. This concerns entities in charge, administrative procedures, and their operation in practice. It is also needed to steer the system as a comprehensive interim reparations programme. Improvements should encompass the consolidation of overall strategic and budgetary planning, data management, and relevant IT solutions, as well as further expansion of the range of damages addressed, measures available, and categories of beneficiaries covered with due priority given to the most vulnerable groups that suffered and continue to suffer severe and/or multiple damages. Emphasis should be placed on advancing and implementing an individualised, victim-centred and gender-sensitive approach and tailored support measures while enhancing effective investigation and discharge of related procedural obligations.

In pursuit of these objectives, the Ukrainian authorities are invited to consider the recommendations suggested in this document. Specific recommendations for particular mechanisms can be found in the

respective sections. Below, we highlight **recommendations that have general applicability across the entire system**. The Ukrainian authorities are encouraged to consider:

- applying *jus ad bellum*-driven full reparations, or/and combined with more targeted and itemised *jus in bello*-based and relevant human rights norms-related substantiation of specific internationally wrongful acts;
- improving strategic and institutional co-ordination, as well as steering arrangements, notably through comprehensive policy steering, including by means of developing a consolidated domestic programming instrument (a comprehensive national strategy on reparations), relevant budgetary planning, coherence of legislation on the entire framework of relevant relief measures, including on the rights and remedies for the war-affected people guided by a victim-centred and gender-sensitive approach;
- synchronising the already developed system and the system yet to be built with the requirements of the European Convention and the case-law of the European Court, notably on Article 41 of the European Convention and as regards Ukraine, among others as to the obligation to implement final judicial decisions; in particular, accumulation of debts and non-enforcement of (potential) judicial decisions should be avoided, since they could result in further deterioration of Ukraine’s compliance with the relevant general measures required under the European Court’s judgments pending execution and respective guidance of the Committee of Ministers, on providing reparations for breaches of the European Convention;
- consolidating the various registers and electronic data management solutions by creating a domestic consolidated data management ecosystem of the aggression-related damages and victims involving a criminal procedure-based constituent or ensuring the mutual technical and legal interoperability of the registers;
- advancing the valuation methodologies that are a central concern across examined compensatory and support programmes, by drawing on international standards and approaches suggested by the European Court’s case-law, including psychological suffering and relevant damages;
- ensuring uniformity and application of enhanced legislative techniques, terminology related to the aggression, outlining its phases, territorial and other parameters and related wording used in the mechanisms and their eligibility criteria, defining the victims’ categories clearly, including

elements that define who the victims are, their needs, vulnerabilities and procedures reflecting the urgency or necessity of aid;

- streamlining the procedures, reducing the administrative burden on the beneficiaries, including by a proactive approach of the bodies in charge, bypassing initial judicial corroboration of facts;
- adjusting or removing certain limitations that may currently restrict access to most needed relief measures, including by expanding the scope of the entire framework to ordinary, unqualified civilians and the range of damages concerned;
- applying gender-sensitive and anti-discriminative approaches to all domestic remedies and redress mechanisms, implementation practices and support measures, as well as further advancement of relief measures available for the most vulnerable and affected victims, including women and children.

**Key points and recommendations regarding the relationship between the domestic framework and the Register of Damage and other international reparations procedures** (*without prejudice to the future rules and regulations and to any future decisions that will be adopted by the Register of Damage by virtue of its competences - CM/Res(2023)3*):

The current gaps in the national documentation and data management systems/registers, valuation methodologies and specific reparation claims, could be addressed by the following elements:

- co-ordinated structuring and preparation of claim(s) on behalf of the Ukrainian authorities, including in line with the overall strategies developed as a part of reparations-related policy steering;
- at least an initial tailored assessment and corroboration of damages and victim's status as well as relief measures provided, and establishing a clear link between them and specific IHL/human rights violations and wrongful acts;
- anticipation of the evidentiary standards of the international judicial and future reparations mechanisms, including the Register of Damage and other claims instruments, including in terms of nuanced argumentation and corroboration of individual, state-backed or inter-state claims, as well as simplified and standardised mass claims;
- including costs incurred for discharging of the investigative and ensued procedural, search and other related obligations, as well as reasonable abatement, monitoring and assessment of environmental and other specific damages;



- their extension beyond reimbursement of the costs/expenses incurred by the authorities for providing relief measures /addressing the damages;
  - complex, including moral/non-pecuniary damages arising from psychological/mental suffering caused by serious ill-treatment, CRSV and other forms of gender-based violence, as well as other composite gross human rights/IHL violations;
  - uniform (template) arrangements for all the mechanisms concerned for the ceding of the right to claim compensation from the Russian Federation to the Government of Ukraine or self-governance bodies (depending on the source and the scope of relief provided); this presumes the existence of a single co-ordinating body (a dedicated entity) at the domestic level, which would lead the authorities' work on reparations;
  - address considerable inconsistencies in terms of the legislative provisions related to the already existing mechanisms, as well as criminal law, and to direct attention to the developments in the national case-law in relation to the interpretation and application of the principle of jurisdictional immunity, consistency of that case-law with notably the requirements of the customary international law.
- Considering the different legal framework and the specific mandate of the Register of Damage, the domestic mechanisms, including a consolidated data management ecosystem of the aggression-related damages and victims, are expected to be wider than and differ from the Register of Damage, including in terms of the scope of data processed and relevant technical functionalities comprised. To ensure effectiveness and coherence, it is essential for the Ukrainian authorities to ensure that the domestic mechanisms and the Register of Damage are able to exchange data and information seamlessly, to the extent possible, using compatible data formats, and contingent upon the capabilities and compliance with the applicable legal framework, and its potential amendment, as appropriate. At the same time that, based on the victim-centred and gender-sensitive approach, the domestic legal system should constitute the basis for an upwards approach in which the Register takes into account the Ukrainian reparations and assistance framework in its assessment and processing of the claims: this concerns, in particular, the categories of claims, the evidential standards, the burden of proof, as well as methods for the evaluation of damage and needs, with a view to ensuring reparations to war-affected persons.
  - In terms of the legislative provisions related to the mechanisms, as well as criminal law, there are considerable inconsistencies, concerning the use of the term “aggression”, such as outlining its

phases, territorial and other parameters, and discrepancies regarding international crimes, which might undermine the eligibility under the Register of Damage and impact the prospects of further reparations. Seemingly, attention should be directed to the developments in the national case-law in relation to the interpretation and application of the principle of jurisdictional immunity. National judicial decisions may hold relevance before the Register of Damage and other international mechanisms, at least as far as their factual findings are concerned, but possibly also on damage assessment.

**Other limbs of the domestic relief and reparations framework:**

- The considerations of the criminal justice chain response to aggression-related atrocities, war and other international crimes and serious human rights violations, as well as securing effective investigation and discharge of further procedural obligations with regard to the latter, require international criminal law-compatible and further procedural legislative adjustments, streamlining institutional, including statistical and data-processing developments. This involves a specific focus on conflict-related sexual and other forms of gender-based violence, child abuse, deportation and related atrocities, introducing long-term support programmes and other remedies for victims and survivors.
- The civil justice and other judicial remedies would benefit from a careful assessment of the court practice concerned with the relief mechanism(s) and scope of the duty to compensate the damages by Ukraine. It would be advisable to revisit the judicial practice as to the lifting of the (state) immunity of the Russian Federation for the purposes of domestic procedures.
- The ongoing advancement of the environmental and cultural damages-related set of documenting, investigation, and relevant data management arrangements would benefit from further focus on their services-oriented facets and other internationally tested types and dimensions of specific reparations.
- There is room for improvement of information exchange, co-ordination, and joint input by relevant NGOs to the operation and advancement of the relief mechanisms, as well as consultation of and outreach to victims, with the management of victim expectations being an integral part of this process.
- There is a wider framework of support measures for combatants, including law enforcement and other armed support forces, falling outside the scope of the present expert report. However,

depending on the wrongfulness of the underlying acts and certain other criteria, these categories could become eligible reparations and relevant (including international) claims.

- Apart from the specifically tailored mechanisms addressed in the present report, the damages in issue may trigger relief measures, subject to fulfilling the respective eligibility criteria, through the regular social and other assistance frameworks, *e.g.*, pension for a loss of the primary income provider, medical assistance available under its regular scheme, etc.
- The same applies to various insurance arrangements, including private insurance schemes which may entitle to further reimbursement of costs and damages incurred.
- So far, no systemic support mechanisms for providing direct compensatory measures for legal entities and businesses have been introduced in Ukraine.