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Internally Displaced Persons in Ukraine: Gaps in Law and Practice

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SUMMARY

Following the annexation of Crimea in March 2014 and the conflict that broke out in Eastern Ukraine shortly afterwards, 1.679.000 people became internally displaced in Ukraine.

Due to the large scale of the displacement, the legislative gaps and low capacity of institutions, national law and practice are inconsistent with international standards for the protection of internally displaced persons.

This research analyses the gaps in protection concerning rights to adequate housing, vote and property restitution. Good practice and lessons from Georgia are scrutinized in order to exemplify possible ways to address the problems.

It is concluded that existing gaps require amendments of the law, implementation of legal provisions in practice, development of long-term strategies and integration of durable solutions for internally displaced persons in Ukraine.

Key words: Internal Displacement, IDPs, Ukraine, Human Rights, International Human Rights Law, Georgia

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LISTS OF ABBREVIATIONS

ECOSOC	United Nations Economic and Social Council
EU	European Union
Guiding Principles	Guiding Principles on Internal Displacement
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced Person
IOM	International Organization for Migration
NGO	Non-governmental organisation
NRC	Norwegian Refugee Council
OAU	Organisation of African Unity
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
UDHR	The Universal Declaration of Human Rights
UN	United Nations
UNECE	United Nations Economic Commission for Europe
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
USAID	United States Agency for International Development

1. INTRODUCTION

Forced displacement is a persistent and complex political and development challenge.¹ As of the end of 2015, there were 40.8 million people internally displaced worldwide as a result of conflict and violence, which is twice the number of refugees in the world.² In the 2030 Agenda for sustainable development, internally displaced persons (IDPs) are specifically mentioned as a vulnerable group who must be empowered.³

In the beginning of 1990s, state sovereignty was considered an obstacle for protection of IDPs, the introduction of sovereignty as a form of responsibility later allowed expression of legitimate concern over protection of citizens of another country. Assuredly, states have primary responsibility to protect IDPs; however, because of the development, human rights, conflict-related and other challenges they are often unable or unwilling to guarantee sufficient protection and assistance. Disorganized responses are targeting only immediate humanitarian needs instead of focusing on the holistic, long-term solutions. As a result, the situation of IDPs all around the world, in regards to their human rights, remains difficult requiring actions from the governments and international community in order to reduce vulnerability and support national and local efforts.

Annexation of Crimea in March, 2014 and the subsequent conflict that broke out in Eastern Ukraine affected over 3.7 million people.⁴ According to INFORM risk management index, which identify countries at risk of humanitarian crisis and disasters, Ukraine is ranked number 27 out of 191 countries with the risk grade increased from 2.8 in 2014 to 5.4 in 2016.⁵ Despite the signing of peace agreements, seize fire violations continue along the contact line between government forces and pro-Russian separatist groups, which causes deaths, injuries, destruction of housing, infrastructure and overall insecurity in the region.

According to the United Nations High Commissioner for Refugees (UNHCR) by 30 April, 2015 close to 801.000 Ukrainians had sought asylum, residence permits or other forms of legal stay in neighbouring countries⁶. In addition there were 3.648 applications for international protection in Germany; 3.270 in Poland; 2.647 in Italy; 1.637 in Sweden; 1.625

¹UNGA, One humanity: shared responsibility, Report of the Secretary-General for the World Humanitarian Summit, A/70/709 (2 February 2016), para.81.

²IDMC, Global Report on Internal Displacement, 2016, p.27, available at: <http://www.internal-displacement.org/globalreport2016/> [Accessed 12 May 2016]

³UNGA, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1 (21 October 2015), para.23.

⁴European Commission, Humanitarian Aid and Civil Protection, ECHO Factsheet-Ukraine, March 2016, p.2.

⁵INFORM, Results and data, available at: <http://www.inform-index.org/Results/Global> [Accessed 24 May 2016]

⁶ In particular 678.200 persons in Russia, 81.065 in Belarus and another 50.172 in Poland.

in France; 200 in Moldova; 50 in Romania⁷, as well as a lot of people who have fled but did not cross national border and remain under the protection of the state. In accordance to the Global Report on Internal Displacement, as of 31 December, 2016 there were 1.679.000 IDPs in Ukraine⁸ who were forced to move from Crimea, Donetsk and Luhansk regions. This constitutes for more than 3 % of Ukraine's population⁹. The majority fled from Eastern Ukraine and between 50.000 to 60.000 people left Crimea; however, not all have been registered.¹⁰

Internal displacement in Ukraine deteriorates structural problems caused by legislative loopholes, low institutional capacity, lack of financial resources and political will. Subsequently, this research paper will discuss theoretical aspects of internal displacement and analyze the framework for achieving durable solutions. As well as, it will focus on gaps in protection of the right to vote, right to property restitution and right to adequate housing as obstacles for achieving durable solutions for IDPs in Ukraine. After identifying legislative and implementation lacunas in the light of international standards and good practice from Georgia possible measures for achievement of durable solutions in Ukraine will be proposed. In the scope of this thesis, Georgia was chosen for comparative analysis as it was once a part of the Soviet Union; therefore, Georgia¹¹ and Ukraine have shared common historical, social and economic backgrounds and have familiar problems that IDPs encounter nowadays linked to the rights to adequate housing, vote and property restitution.

1.1.Purpose and research questions

The main purpose of this study is to provide thorough theoretical analysis of the concept of internal displacement and gaps in protection of the rights to vote, adequate housing and property restitution for IDPs. These rights were chosen by the researcher due to their

⁷UN OCHA, Situation report No.38 as of 1 May (2015), p.2.

⁸IDMC, Global Report on Internal Displacement, 2016, p.102-103, available at: <http://www.internal-displacement.org/globalreport2016/> [Accessed 12 May 2016]

⁹Supreme Council of Ukraine, Recommendations after parliamentary hearings "State of observance of rights of internally displaced persons and Ukrainian citizens living on temporarily occupied territory of Ukraine and Ukraine-uncontrolled territory in antiterrorist operation zone", № 1074-19 (2016).

¹⁰IDMC, Ukraine IDP figures analysis (2015), available at: <http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/ukraine/figures-analysis> [Accessed 24 May 2016]

¹¹After Georgia's declaration of independence in 1991 secessionist conflicts broke out in South Ossetia (1991-1992) and Abkhazia (1992-1993), which causes displacement of over 360.000 persons. Additionally, in August 2008 war between Georgia and Russia temporarily displaced more than 138.000 individuals. Even though the majority of IDPs returned home when Russian forces were withdrawn, but nearly 25.000 IDPs remained in protracted displacement. See. UNHCR, Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Georgia, July 2010, available at: <http://www.refworld.org/docid/4c4d2bfa2.html> [Accessed 26 May 2016]

importance for achieving durable solutions for IDPs in Ukraine. The research will highlight the significance of integrated approach and long-term strategies for sustainable solutions.

The research questions of this study are:

1. Is the protection of IDPs temporal?
2. What obligations does Ukraine have under international law towards IDPs?
3. Is the national legislation of Ukraine in compliance with the international obligations on protection of IDPs right to vote, adequate housing and property restitution?
4. What are the main challenges that IDPs face in regards to the right to vote, right to property restitution and right to adequate housing?
5. Can existing laws and policies regulating protection of IDPs right to vote, right to property restitution and right to adequate housing be improved and how?

In order to answer these questions, this research paper will provide a general overview of the conflicts in Crimea and Eastern Ukraine, followed by theoretical development of concept of internal displacement and discussion when internal displacement ends. After deliberation of the legal framework for the protection of IDPs, Chapter 5 will elaborate on the gaps between international standards and Ukrainian law in regards to right to adequate housing, right to vote and right to property restitution. It will cover specific international standards, national regulations and policies, common problems encountered by IDPs and relevant experience from Georgia. In the next chapter the framework for achieving durable solutions for IDPs in regards to the abovementioned rights will be provided. Lastly, the research will be concluded with specific recommendations in order to ensure efficient protection of the right to vote, property restitution and adequate housing for IDPs in Ukraine.

1.2. Methodology

The present research is based on legal analysis of international and national norms with regard to protection of IDPs, such as the UN Guiding Principles on Internal Displacement, General Comments, Law of Ukraine ‘On ensuring of rights and freedoms of internally displaced persons’, as well as literature reviews.

Results of the analysis are then applied to a particular case of Ukraine, with comparative analysis drawing on the example of Georgia. Taking into consideration that Georgian experience is an integral part of this study, national legislation of Georgia, as well as reports of non-governmental organizations on the situation of Georgian IDPs will be used. The

research is meant to be practical and through the example of a particular state show how to ensure protection of IDPs rights.

1.3. Delimitations

Internal displacement is a complex phenomenon, which triggers various human rights problems. In order to provide comprehensive analysis on the matter, I will focus only on specific aspects of the right to adequate standard of living, right to property and right to political participation – the right to adequate housing, the right to property restitution and the right to vote respectively.

In the context of the conflict in Eastern Ukraine and annexation of Crimea, displacement only as the result of or in order to avoid the effects of armed conflict and violations of human rights will be analysed.

Also, there are eight factors that can be used to determine to what extent a durable solution has been achieved, which include:

- safety and security;
- adequate standard of living;
- access to livelihoods;
- restoration of housing, land and property;
- access to documentation;
- family reunification;
- participation in public affairs;
- and access to effective remedies and justice.¹²

However, due to the page limit, in this thesis durable solutions will be analysed only through ensuring the right to vote, adequate housing and property restitution. Despite the fact that gender perspective needs to be considered for achieving solutions that are sustainable and durable, this issue will not be covered here.

Finally, even though international organisations significantly assist in addressing the gaps in protection of internally displaced, their role will not be discussed in this thesis due to the requirement confines.

¹² UNGA, Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, A/HRC/13/21/Add.4 (9 February 2010), p.18, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.21.Add.4_en.pdf

2. HISTORICAL BACKGROUND OF THE CONFLICT

From 2007 to 2012 a set of negotiations were held to strengthen relations between the European Union (EU) and Ukraine.¹³ The signing of EU-Ukraine Association Agreement was planned during the Eastern Partnership Summit in Vilnius, Lithuania on the 28th - 29th of November, 2013. However, on the 21st of November, 2013 the Ukrainian government postpone the preparations for signing stating that measures need to be taken to ensure national security of Ukraine and analyse the impact of the planned agreement on industrial production and trade with Russia.¹⁴ This decision triggered demonstrations in Kyiv, known as the Euromaidan, due to the sympathies of the demonstrators.

One of the turning points that transformed pro-European students' protest into a full-fledged movement against the President and corrupt government occurred on the 30th of November, 2013 when special police units attacked and dispersed protestors (mainly students) from the Independence Square (Maidan).

Unfortunately, despite months of peaceful protest, negotiations and political bargaining, the Ukrainian parliament and President did not respond to the demands of protestors and opposition. Quite the opposite occurred as protestors were prosecuted, beaten, kidnapped, detained and tortured, which consequently, lead to the escalation of violence in Kyiv.

On the 18th – 20th of February, 2014 more than a hundred people were killed and hundreds more wounded as protestors marched on the Ukrainian Parliament and security forces attempted to clear out Independence Square.¹⁵ On the 21st of February, 2014 Ukrainian President Viktor Yanukovich fled to Russia. After his escape a new coalition was formed, interim government installed and acting Prime Minister and President appointed.

2.1. Conflict in Crimea

Former German Chancellor, Helmut Schmidt, asserts that in judging the present Ukrainian crisis, the history of Crimea is more important than international law.¹⁶ It seems that history

¹³ Government of Ukraine, Association Agreement between the European Union and Ukraine (2015), available at: http://www.kmu.gov.ua/control/en/publish/article%3Fart_id=248279225&cat_id=248274610 [Accessed 24 May 2016]

¹⁴ Cabinet of Ministers of Ukraine, Order, The question of the conclusion of Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their countries – members (*Питання укладання Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським Співтовариством з атомної енергії і їх державами - членами, з іншої сторони*), 21.11.2013.

¹⁵ Ukraine Crisis Timeline, 2014, available at: <http://ukraine.csis.org/kyiv.htm#8> [Accessed 24 May 2016]

¹⁶ Peter Hilpold (2015), Ukraine, Crimea and New International Law: Balancing International Law with Arguments Drawn from History, *Chinese Journal of International Law* 14 (2), p.237.

becomes more preponderant the weaker the legal arguments are.¹⁷ Hence, historical context will be discussed briefly in order to understand the background of the conflict, perspectives for resolving it and the specific needs of the IDPs from Crimea.

The Crimean Khanate, an Ottoman Empire vassal state, was ruling Crimea from the 14th century to the end of 18th century, until in 1783 it was conquered by Empress Catherine II ‘the Great’. Following this event, a considerable part of the Tatar population immigrated to the Ottoman Empire as a consequence of economic, cultural and religious discrimination by the Russian authorities.¹⁸

In 1921, a Crimean Autonomous Soviet Socialist Republic was created and integrated in the Russian Socialist Federation of Soviet Republic, which led to the political and cultural empowerment on the basis of a territorial autonomy.¹⁹ However, it did not last for long as from 1928 to 1939 the period of russification and sovietisation started under Stalin’s reign and about 35.000-40.000 Crimean Tatars were imprisoned or deported.²⁰ Furthermore, during the Second World War approximately 200.000 Tatars were deported to Central Asia, allegedly for co-operating with Hitler's Germany.²¹

In 1945, Crimean autonomy was abolished and later became a part of Ukraine in 1954 when Soviet Union leader Nikita Khrushchev transferred the peninsula from the Russian Soviet Socialist Republic to the Ukrainian Soviet Socialist Republic. Nevertheless, the Crimean Tatars were not able to return to their homeland until 1989 when a formal decision was adopted by the Supreme Soviet of the Soviet Union.²²

After Ukraine became independent in 1991, Russian president Boris Yeltsin agreed that Crimea could remain a part of Ukraine²³. On 12th of February, 1991 Ukraine granted Crimea autonomous status.²⁴

According to the Constitution of Ukraine, the Autonomous Republic of Crimea is an inseparable constituent part of Ukraine.²⁵ It has its representative body - the Supreme Council of the Autonomous Republic of Crimea - and its own Constitution. Moreover, local authorities have power to regulate different issues, in particular mining, urban construction,

¹⁷ Hilpold, p. 239-240.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Margus Kolga and others, ‘The Red Book of the Peoples of The Russian Empire’, 1993, available at: http://www.eki.ee/books/redbook/crimean_tatars.shtml [Accessed 24 May 2016]

²¹ Ibid.

²² Ibid.

²³ BBC, Ukraine crisis: Does Russia have a case?, available at: <http://www.bbc.com/news/world-europe-26415508>, [Accessed 24 May 2016]

²⁴ Hilpold p. 243.

²⁵ Constitution of Ukraine, 1996, Article.134.

tourism, and transportation.²⁶ Ukrainian law ‘On the principles of the state language policy’ allows the use of the Russian language in everyday life.²⁷ De-facto as an autonomous region of Ukraine, Crimea has wide margin of appreciation and can decide on a number of issues within the scope of the law. This model worked until 2014, following the abovementioned events in Kyiv, when pro-Russian rallies began in Crimea demanding greater autonomy from Ukraine and closer ties to Russia. Masked gunmen without insignia seized government buildings in Simferopol²⁸ and Russian president Vladimir Putin ordered military exercises on the border with Ukraine. Furthermore on the 1st of March, 2014, the Russian Council authorized the use of armed forces on the territory of Ukraine.²⁹ Ten days later the Supreme Council of Crimea adopted Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol. According to this document, if a decision to become part of Russia is made at the referendum of 16th of March, 2014, Crimea will be announced an independent and sovereign state with a republican order and will request to become a constituent republic of the Russian Federation.³⁰

At the next day after the referendum, where the voters supported reunification with Russia, Russian president Vladimir Putin issued a decree ‘On the recognition of the Republic of Crimea’, by which Crimea as a ‘sovereign and independent’ state was recognized.³¹ Importantly, invalidity of the referendum was underscored by the UNGA resolution³² and the conclusion of Venice Commission. The latter indicated that it was conducted with violations of the Constitution of Ukraine, Constitution of Crimea and circumstances in Crimea at that time did not allow the holding of a referendum in line with European democratic standards.³³

On 21st of March, 2014, at the EU summit Prime Minister of Ukraine and European leaders signed a political part of an Association Agreement committing Ukraine to greater

²⁶ Constitution of Ukraine, 1996, art.137.

²⁷ Law of Ukraine, ‘On the principles of the state language policy’ (*Про засади державної мовної політики*), 03.07.2012 № 5029-VI.

²⁸Christine Hauser, Jennifer Preston, Updates on the Tensions in Ukraine (2014), available at: http://thelede.blogs.nytimes.com/2014/02/27/live-coverage-tensions-in-ukraine/?action=click&contentCollection=Europe&module=RelatedCoverage®ion=Marginalia&pgtype=article&_r=0 [Accessed 24 May 2016].

²⁹ UNSC, Ukraine, in Emergency Meeting, Calls on Security Council to Stop Military Intervention by Russian Federation’, Meetings Coverage, SC/11302 (1 March 2014).

³⁰ Supreme Council of the Autonomous Republic of Crimea, Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol (11 March 2014).

³¹ President of Russia, Executive Order on recognising Republic of Crimea, 17March 2014, available at: <http://en.kremlin.ru/events/president/news/20596> [Accessed 24 May 2016].

³² UNGA Resolution, Territorial Integrity of Ukraine, GA/11493 (27 March 2014).

³³ Venice Commission, Opinion on Whether the Decision Taken by the Supreme Council of The Autonomous Republic of Crimea in Ukraine to Organise a Referendum on Becoming A Constituent Territory of the Russian Federation or Restoring Crimea's 1992 Constitution is Compatible with Constitutional Principles, CDL-AD(2014)002 (21 March 2014).

economic and political cooperation with the EU. On the same date, Vladimir Putin signed legislation formally completing the process of admitting Crimea into Russia.³⁴

From the perspective of international law, Russia could not intervene to the sovereign territory of Ukraine in order to rescue Russian citizens or upon the invitation of the former President Viktor Yanukovich. By doing so it breached number of international treaties that regulate Russian-Ukrainian relationships, guarantee territorial integrity of Ukraine and prohibit the use of force. Among them are UN Charter, the Helsinki Final Act, the 1997 Treaty on friendship, cooperation, and partnership between Ukraine and Russia, the Black Sea fleet agreement between Russia and Ukraine, and the 1994 Budapest memorandum on security assurances. Pursuant to the latter:

*‘the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America [...] commit to respect the independence and sovereignty and the existing borders of Ukraine’ and ‘reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine’.*³⁵

Hence, under the international law, Crimea has not become an independent state and it could not enter into any treaty relations with Russia. Taking into consideration the circumstances of the conflict in Crimea, it has raised an obligation of other states, international organizations and specialized agencies not to recognize Crimea’s accession to Russia.³⁶ Predictably, Russian opinion on this matter differs as was stated by Kremlin spokesman Dmitry Peskov, ‘Crimea is a region of the Russian Federation and of course the subject of our regions is not up for discussion’³⁷.

After the annexation approximately between 50.000 to 60.000 people have fled Crimea, though not all have been registered.³⁸ As for now, a reintegration of Crimea into Ukraine is unlikely, even though de-jure Crimea still belongs to Ukraine.

³⁴BBC, Ukraine: Putin signs Crimea annexation (21 March 2014), available at: <http://www.bbc.com/news/world-europe-26686949> [Accessed 24 May 2016]

³⁵ Budapest Memorandums on Security Assurances, 1994, available at: <http://www.cfr.org/nonproliferation-arms-control-and-disarmament/budapest-memorandums-security-assurances-1994/p32484>.

³⁶ UNGA Res 68/262, Territorial integrity of Ukraine, A/RES/68/262 (27 March 2014); See also, David Raič (2005), Statehood & the Law of Self-Determination, *European Journal of International Law*, 16 (4): 791-795.

³⁷ Timothy Heritage, Darya Korsunskaya, Russia rules out handing back Crimea, expands war games (17 March 2017), available at: <http://www.reuters.com/article/us-ukraine-crisis-crimea-russia-idUSKBN0MD0Z220150317> [Accessed 24 May 2016]

³⁸ IDMC, Ukraine IDP figures analysis (2015), available at: <http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/ukraine/figures-analysis> [Accessed 24 May 2016]

2.2. Conflict in Eastern Ukraine

After the annexation of Crimea, pro-Russian protests started in Eastern Ukraine calling for installation of a federal system in Ukraine, the return of former President Viktor Yanukovich to power, early local elections, and a referendum on the future of the eastern regions.³⁹ Pro-Russian armed militants, which ‘were equipped with specialized Russian weapons and the same uniforms as those worn by the Russian forces that invaded Crimea’⁴⁰, seized governmental buildings and security facilities in Donetsk, Luhansk and proclaimed the creation of the ‘Donetsk People's Republic’(‘DPR’) and ‘Luhansk People's Republic’(‘LPR’). The situation was escalating as Russia’s military was mobilising and reinforcing troops along its border with Ukraine allegedly for the military exercise.

In the middle of April, 2014, anti-terroristic operation began as pro-Russian protesters seized more cities and clashes intensified. Negotiations conducted on the different levels, with an aim to de-escalate conflict, were not successful and eventually Ukraine lost effective control of the parts of Luhansk and Donetsk regions. Following these events, referendum was held in the Eastern Ukrainian Peoples ‘republics’ by means of which separatists seek union with Russia.

As the security situation worsened, humanitarian corridors were created to allow civilians to escape fighting between the Ukrainian army and pro-Russian separatists. Clashes, with outbreaks of violence, continued on and off until September, 2014 when the Protocol on the results of consultations of the Trilateral Contact Group with respect to the joint steps aimed at the implementation of the Peace Plan of the President of Ukraine, P. Poroshenko, and the initiatives of the President of Russia, V. Putin (Minsk I) was signed and cease fire announced in Ukraine.

Pursuant to the Minsk I, the parties agreed to ensure the immediate bilateral cessation of the use of weapons. Despite this agreement, shooting, artillery fire, and indiscriminate shelling of residential areas continued to a varying degree in the Donetsk city, Donetsk airport, and city of Mariupol.⁴¹ In fact, parties did not comply with obligations under the peace accord. Yet, it still encouraged many IDPs to return to their homes in the regions of Donetsk and Luhansk either to collect their belonging or stay permanently. After the return

³⁹Ukrainian Crisis Timeline, Pro-Russian Protestors Rally in Donetsk, March 22, 2014, available at: <http://ukraine.csis.org/east1.htm#5> [Accessed 24 May 2016]

⁴⁰Radio Liberty, Ukraine Takes Action In Slovyansk; West Condemns Russian Involvement (13 April 2014), available at: <http://www.rferl.org/content/ukraine-slovyansk-operation-launched/25331132.html> [Accessed 24 May 2016]

⁴¹OHCHR, Report on the human rights situation in Ukraine 1 December 2014 to 15 February, 2015.

they encountered serious difficulties as private property was destroyed or damaged, and employment was limited because many businesses closed down. At the same time tensions increased between IDPs and residents of other regions, mostly due to a growing distrust towards persons coming from the areas controlled by armed groups and suspicion of connections with pro-Russian armed groups.⁴²

Whereas after the parliamentary elections in Ukraine on the 26th of October, 2014, separatists were planning to organize elections in the self-proclaimed republics; the Ukrainian government decided to end the payment of pensions, benefits, and other subsidies to the regions of eastern Ukraine not controlled by Ukrainian authorities.⁴³

The ceasefire was falling apart as fighting broke out again while separatist efforts were reinforced with weapons, supplies and troops from Russia⁴⁴; due to the fact that the Russian-Ukrainian border was not secured. The OHCHR condemned the indiscriminate shelling of residential areas in both government-controlled territory and in areas controlled by the armed groups which lead to numerous civilian casualties. Between mid-April 2014 and May 30th, 2015, at least 6.417 people have been killed and 15.962 wounded in the conflict zone of Eastern Ukraine.⁴⁵ Under these circumstances the Ukrainian government introduced a state of emergency in the Donetsk and Luhansk regions to guarantee the safety of citizens and civil protection.

With the purpose to ensure the fulfilment of the Minsk I on the 12th of February, 2015 a package of measures for the implementation of the Minsk agreements was adopted. However, Russia still undertook a build-up of armed forces along the border with Ukraine and provided ongoing support for separatists. As the result, fighting in eastern and south-eastern Ukraine continued threatening the fragile peace and implementation of the Minsk agreement. In its report released as of September, 2015, the OSCE Special Monitoring Mission (OSCE SMM) indicated that there were ongoing violations of the ceasefire agreement from both sides of the conflict and ‘the security situation in Donbas is fluid and unpredictable’⁴⁶. Taking it into account, the deadline for the implementation of the Minsk agreement was extended into 2016.

⁴²OHCHR, Report on the human rights situation in Ukraine 16 September 2014, para 13.

⁴³UNIAN, Kyiv suspends payment of pensions in militant-held Donbas, available at: <http://www.unian.info/economics/1016246-kyiv-suspends-payment-of-pensions-in-militant-held-donbas.html> [Accessed 24 May 2016]

⁴⁴ UNSC, Meeting, S/PV.7311 (12 November 2014).

⁴⁵ OHCHR, Report on the human rights situation in Ukraine 16 February to 15 May 2015.

⁴⁶ OSCE, Latest from OSCE Special Monitoring Mission to Ukraine based on information received as of 9 September 2015, 10 September 2015, available at: <http://www.osce.org/ukraine-smm/181411> [Accessed 24 May 2016]

Ukrainian President, Petro Poroshenko, has committed to restoring Ukrainian control over Donetsk and Luhansk region and not to ‘freeze’ the conflict. It is considered that the former can be reached by the adoption of the electoral law, which will allow the conduct of elections and hence provide some kind of political solution to the conflict.⁴⁷ Currently, despite a ceasefire agreement and efforts of the international community, Russian ‘hybrid warfare’⁴⁸ continues in Eastern Ukraine with death tolls increasing every day.

3. INTERNAL DISPLACEMENT IN INTERNATIONAL LAW

3.1. Development of the concept of internal displacement

Even though internal displacement is not a new phenomenon, it has arisen on international agenda only in the last decade of the 20th century. This can be explained by the traditional notion of sovereignty, which was interpreted in a way that gave government exclusive power over their populations. Unlike IDPs, the issues of refugees who fled across borders received more attention from the international community after the Second World War. In 1950, the OHCHR was established and one year later the Refugee Convention was adopted. In this chapter of the research, internal displacement will be discussed as the outcome of conceptualisation of sovereignty as responsibility, which leads to the development of system of IDPs protection.

The necessity to create an international system to protect IDPs was noticed in 1984 during drought, famine and civil war in Ethiopia.⁴⁹ It forced people to move to another part of the country and unless they crossed the border to Kenya, where the help was provided by the UN, they were deprived of food, shelter, medicine or sanitation. Noticeably, there were no institutional arrangements in the UN system for assistance or protection of IDPs. The conference held in Oslo in August 1988 on the plight of refugees, returnees and displaced persons in Southern Africa was the first to officially draw attention to this gap.⁵⁰ Correspondingly, the significance of this problem was highlighted in the number of other documents: Vienna Declaration and Programme of Action of the World Conference on

⁴⁷Ukrainian Crisis Timeline, Pro-Russian Protestors Rally in Donetsk, March 22, 2014, available at: <http://ukraine.csis.org/east1.htm#5> [Accessed 24 May 2016]

⁴⁸ Alexander Lanoszka, Russian Hybrid Warfare and Extended Deterrence in Eastern Europe, *International Affairs* (2016), vol. 92, no. 1: 175-195.

⁴⁹ Roberta Cohen, Developing an International System for Internally Displaced Persons, *International Studies Perspectives* 7 (2), 2006, p. 88.

⁵⁰ECOSOC, Report on Refugees, Displaced Persons and Returnees, E/1991/109/Add.1 (27 June 1991), para 118.

Human Rights (1993)⁵¹, San Jose Declaration on Refugees and Displaced Persons (1994)⁵²; Towards a Genuine Partnership in a New Era: Summit Declaration of the Conference on Security and Cooperation in Europe (1994)⁵³; Recommendations of the Organisation of African Unity /UNHCR Symposium on Refugees and Forced Population Displacements in Africa (1994)⁵⁴. It helped to start developing the strategy and lobbying for enhanced involvement of the UN with IDPs.

In the beginning of the 1990s, dealing with the problems of IDPs meant confronting state sovereignty.⁵⁵ States have a primary responsibility for protecting human rights, which implies a system of law that is responsive to the needs of the people. Thus, development of this concept was happening gradually. Initially, due to intensive lobbying from NGOs in March 1991, UN Resolution 1991/25 ‘Internally Displaced Persons’⁵⁶ was approved. It is of particular importance as internal displacement no longer was considered to be exclusively a humanitarian issue but became a part of the human rights agenda as well.⁵⁷

Lately, the Secretary General’s analytical report on IDPs prepared in 1992 called for the establishment of a focal point within the human rights system for IDPs.⁵⁸ With this in mind, the Commission on Human Rights requested the Secretary General:

‘to designate a representative to seek again views and information from all Governments on human rights issues related to internally displaced persons, including the examination of existing human rights and standards and their applicability to the protection of and relief assistance to internally displaced persons’⁵⁹

⁵¹See part I, para. 23: ‘... emphasizes the importance of giving special attention including through intergovernmental and humanitarian organizations and finding lasting solutions to questions related to internally displaced persons including their voluntary and safe return and rehabilitation’.

⁵²See p.5 : ‘to affirm that the problem of the internally displaced, albeit the fundamental responsibility of the States of their nationality, is nevertheless of concern to the international community because it is a human rights issue which can be linked to prevention of causes which generate refugee flows’.

⁵³ See para.32: ‘the participating States express their concern at mass migratory movements in the CSCE region, including millions of refugees and displaced persons, due mainly to war, armed conflict, civil strife and grave human rights violations’.

⁵⁴ See. para.3: ‘reaffirmed its continued validity as the regional foundation for providing protection and finding solutions for refugees and problems of forced population displacement in Africa’.

⁵⁵ Thomas Weiss, David Korn, ‘Internal Displacement: Conceptualization and its Consequences, London: Routledge, 2006, p. 24.

⁵⁶ UNCHR, Internally Displaced Persons, E/CN.4/RES/1991/25 (5 March 1991).

⁵⁷ Weiss & Korn. p. 23.

⁵⁸ UNCHR, Analytical Report of the Secretary-General on Internally Displaced Persons, E/CN.4/1992/23 (14 February 1992).

⁵⁹ UNCHR, Internally displaced persons, E/CN.4/RES/1992/73 (5 March 1992).

Hence, Dr. Francis Deng was appointed as the first UN Secretary-General Representative on Internally Displaced Persons.⁶⁰ It is worth mentioning that conceptualization and effective dissemination of sovereignty as responsibility on the part of governments to protect their citizens is considered to be a key legacy of Francis Deng's mandate.

Special representatives are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective.⁶¹ Today his/her mandate allows to:

- engage in coordinated international advocacy and action for improving protection and respect of the human rights of IDPs;
- continue and enhance dialogues with governments as well as intergovernmental, regional and non-governmental organizations and other relevant actors;
- strengthen international response to the complex problem of situations of internal displacement;
- mainstream the human rights of IDPs into all relevant parts of the UN system.⁶²

However, when Francis Deng was appointed the efforts to develop a framework and promote strategies for better protection, assistance for IDPs had just started.⁶³ He made in-depth studies on the issue and proposal for the international system of protection. A conceptual framework developed by Deng emphasises on the fact that IDPs are within the borders of their own countries and subject to state sovereignty of their states. It included a legal framework, which provided the rights of the internally displaced as well as corresponding obligations of the state; institutional arrangements at the national, regional, and international levels; and strategies in order to prevent situations of displacement and protect IDPs from human rights violation.⁶⁴

In 1994, as part of his work, the Brookings-Refugee Policy Group Project on Internal Displacement was created in order to develop 'a comprehensive global strategy for providing

⁶⁰ Dr. Walter Kälin, was appointed in September 2004; Dr. Chaloka Beyani was appointed in September 2010. Ms. Cecilia Jimenez-Damary was appointed as Special Rapporteur in September 2016 and assumed the mandate on 1 November 2016.

⁶¹OHCHR, Special Procedures of the Human Rights Council, available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx> [Accessed 24 May 2016]

⁶²HRC, Mandate of the Special Rapporteur on the human rights of internally displaced persons, A/HRC/RES/23/8 (20 June 2013), para.14 (a).

⁶³UNGA Res50/195, Protection of and assistance to internally displaced persons, A/50/195 (11 March 1996).

⁶⁴ Cohen, p. 88.

more effective protection of and assistance to the estimated 30 million IDPs around the world⁶⁵ and support the mandate of the representative.

Another contribution to the development of the concept of internal displacement was *Compilation and Analysis of Legal Norms* prepared by the Ludwig Boltzmann Institute of Human Rights (Austria), the American Society of International Law and the International Human Rights Law Group (United States of America) in 1995. The research aimed to determine whether existing international law adequately covered needs for protection of IDPs and whether there were any gaps.⁶⁶ On the one hand, the analysis showed that existing law addresses a lot of issues related to IDPs, among them are the right to life, the prohibition of torture, the prohibition of contemporary forms of slavery. On the other hand, there were clear gaps in protection related to personal documentation, identification and registration for the displaced, restitution of or compensation for property lost during displacement.⁶⁷ Also, there were general norms but no specific rights relevant for the protection of particular needs of internally displaced. To exemplify, there were norms on freedom of movement but no explicit guarantee against the forcible return of internally displaced persons to places of danger.⁶⁸ The study highlighted that the non-discrimination clause does not contain the status of IDPs. Even though it can be extracted from the notion of ‘other status’, the report indicates that mentioning it among other grounds would strengthen the protection of the IDPs.

Thus, Deng’s report *Compilation and Analysis of Legal Norms* set the grounds for addressing the specific needs of the IDPs in a comprehensive manner and increased international awareness about the problem. The next necessary step was the creation of the IDPs data system, which was undertaken jointly by the Norwegian Refugee Council and U.S Committee for Refugees. Successively, the first comprehensive global survey was published in 1998 overcoming the difficulties in collecting data on this issue.⁶⁹

Notwithstanding all the developments, there were no international legal standards that were one of the main goals for those advocating for the assistance and protection of IDPs. Drafting of the Guiding Principles started in 1996 based on the Deng’s report - *Compilation*

⁶⁵Francis M. Deng , An Interim Report to the United Nations Secretary General on Protection and Assistance (December 1994, 7).

⁶⁶ UNCHR, *Compilation and Analysis of Legal Norms*, Report of the Representative of the Secretary-General on Internally Displaced Persons UN Doc E/CN.4/1996/52/Add.2(5 Dec 1995).

⁶⁷UNCHR, *Compilation and Analysis of Legal Norms*, Report of the Representative of the Secretary-General on Internally Displaced Persons UN Doc E/CN.4/1996/52/Add.2(5 Dec 1995), para.5.

⁶⁸Ibid, para.4.

⁶⁹ Weiss & Korn, p.53.

and Analysis of Legal Norms, and involved contribution from the different UN organisations, NGOs and jurists. Finally, in 1998 the Guiding Principles were presented to the UNCHR.

The factors that triggered the development of the concept of internal displacement; hence, international systems for IDPs protection were summarized by Thomas Weiss and David Korn.⁷⁰ Firstly, the numbers of IDPs had increased as a result of the explosion of civil wars after the Cold War. According to the data provided to the U.S Committee for Refugees, by 1992 the number of IDPs from wars was close to 25 million, which exceeded the figure of refugees. Secondly, usually IDPs are more vulnerable to the human rights violations as they are deprived of housing, employment, and health services, which deteriorate even more if the state is unwilling or unable to protect IDPs. Thirdly, IDPs crisis impacts other countries, as well as has political and economical consequences for the region. Fourthly, after the end of the Cold War the understanding of the state sovereignty has changed and created a background for a legitimate concern of the international community over internal affairs of the states. Lastly, it is believed that the reconstruction and development in societies affected by conflicts will be inefficient without the sustainable reintegration of displaced persons.⁷¹

3.2. Definition of internally displaced persons

The definition of IDPs plays an important role in identifying the populations of concern and their particular needs, compiling data, and framing laws and policies designed to assist them.⁷² The first definition presented in an analytical report of the Secretary General on IDPs in 1992 was considered too narrow, as IDPs were defined as:

*'persons or groups who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disaster, and who are within the territory of their own country'*⁷³.

However, after some deliberations the changes were introduced. Such criterion as 'suddenly or unexpectedly in large numbers' was excluded, while reference was made to 'habitual places of residence' as well as home. It was added that people can not only be forced to but also obliged to leave and flee either as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or

⁷⁰ Cohen, pp.89-90.

⁷¹ Weiss & Korn, p.15.

⁷² Erin Mooney, The Concept Of Internal Displacement and the Case of Internally Displaced Persons as a Category of Concern, *Refugee Survey Quarterly*, Vol. 24, Issue 3, 2005, p.10.

⁷³ UNCHR, Analytical Report of the Secretary-General on Internally Displaced Persons, E/CN.4/1992/23 (14 February 1992), para.17.

human-made disasters. Finally, the last part was altered to those ‘who have not crossed an internationally recognized State border’ because of the possibility of border change. As a result, the Guiding Principles presented in 1998 that internally displaced persons are defined:

‘persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border’.

To start, the term ‘homes or places of habitual residence’ does not necessarily refer to a house or a building but can also designate land on which groups traditionally live or depend for their livelihoods.⁷⁴ Furthermore, the list of causes of internal displacement is not exhaustive. It includes, but not limited to, armed conflict, situations of generalized violence, and violations of human rights or disasters.

Pursuant to the definition, there are two core elements of IDPs: *involuntary departure and the fact that the individual remains within his/her country*. The former distinguishes them from people who left their homes voluntary and the latter – from refugees.

Walter Kälin, the successor of Francis Deng, asserts the fact that movement taking place within national borders needs to be understood in a broad sense. This requirement is met if:

- displaced persons have to travel through the territory of a neighbouring state in order to gain access to a safe part of their own country;
- they first go abroad and then return (voluntarily or involuntarily) to their own country but cannot go back to their place of origin/habitual residence or home for reasons indicated in the definition;
- or they left voluntarily to another part of their country but cannot return to their homes because of events occurring during their absence that make return impossible or unreasonable.⁷⁵

Importantly, IDPs definition provided in the Guiding Principles is a descriptive rather than a legal definition. It means that *it describes the factual situation and does not provide a special legal status or rights in the same way that recognition as a refugee does*.⁷⁶ This

⁷⁴ Global Protection Cluster, Handbook for the Protection of Internally Displaced Persons, June 2010, p.8, available at: <http://www.refworld.org/docid/4790cbc02.html> [Accessed 26 May, 2016]

⁷⁵ Walter Kälin, Guiding Principles on Internal Displacement: Annotation, The American Society of International Law 2008 (38), p.19.

⁷⁶ Global Protection Cluster, Handbook for the Protection of Internally Displaced Persons, June 2010, p.8, available at: <http://www.refworld.org/docid/4790cbc02.html> [Accessed 26 May, 2016]

derives from the fact that unlike refugees who flee outside their own country and as the result do not enjoy state protection; IDPs are entitled to all the rights and guarantees as citizens of their state.⁷⁷

There is a gap in human rights law between those who are internally displaced and those who are refugees. According to the Guiding Principles, every human being shall have the right to be protected against being arbitrarily displaced from his or her home. However, it also recognises that some displacement, such as for large-scale development projects, may be justified by ‘compelling and overriding public interests’⁷⁸ and that ‘measures shall be taken to minimize displacement and its adverse effects’⁷⁹. Importantly, there is no justification allowed for making someone a refugee because the threat which forms the basis for refugee status is persecution and the lack of protection against being persecuted, whereas IDPs may be displaced for a variety of reasons not limited to persecution.⁸⁰

Another aspect, which links refugee status and IDPs, is that during the refugee status determination process they can be denied asylum and returned to their country of origin because of existence of the *internal relocation alternative*. In this case s/he will not be able to return to their home or place of residence, but the government is willing and able to protect him/her in other parts of the country. Thus, under these circumstances refugee law will amplify the number of IDPs – when a person ceases to become a refugee, s/he becomes an IDP. In regards to the situation of the secessionist movements and self-proclamation of independence, which lead to the displacement of ethnic Georgians from Abkhazia, ethnic Azeris from Nagorno-Karabakh or Crimean Tatars from Crimea, these IDPs would not be qualified for refugee status in case they can exercise their rights as citizens in the new locations.⁸¹

3.3. When does internal displacement ends?

The Guiding Principles do not explicitly address the question of when displacement ends. However, it plays an important role when compiling reliable IDPs statistics, formulating government and international programs to address the displacement-related needs, setting forth when the focus of national and international responsibility can change from the IDPs

⁷⁷ Global Protection Cluster, Handbook for the Protection of Internally Displaced Persons, June 2010, p.8, available at: <http://www.refworld.org/docid/4790cbc02.html> [Accessed 26 May, 2016]

⁷⁸ Principle 6 and 7 of the Guiding Principles on Internal Displacement.

⁷⁹ Ibid.

⁸⁰ Bill Frelick, Displacement without end: internally displaced who can't go home, *Forced Migration Review*, 17 May, 2003, p.10-12.

⁸¹ Ibid.

needs to more holistic rehabilitation and development of the community as a whole or when informing IDPs of the duration of the benefits associated with this classification.⁸² Ending of the internal displacement on arbitrary basis, for example either it is in the interest of a government to claim that there are no IDPs or there are no funds left, negatively impacts protection and assistance of IDPs. Likewise, insurances that people remain IDPs, such as in the situation of protracted violence, can undermine their ability to integrate into society and create conditions of long-lasting dependency. Therefore, the answer to the question: when displacement ends will help to understand the basis on which decisions are made and to which extent they meet factual circumstances on the ground.

It can be approached from three different perspectives: the Guiding Principles, the analogy with refugee law and actual situations of internal displacement.⁸³ When assessing the end of displacement through the Guiding Principles whether someone is an IDP or not, depends on the existence of objective facts. Taking into consideration that the definition of IDPs is descriptive, this classification applies until the factual situation of internal displacement continues to exist. And displacement shall last no longer than required by the circumstances (principle 6.3 of the Guiding Principles). In order to change the factual situation national authorities have the responsibility to establish conditions and provide the means for IDPs to find one of three durable solutions: *return at the place of origin; local integration; resettlement in another part of the country*. However, IDPs can continue to have displacement-specific needs after return or can be victims of displacement-specific discrimination in the places of resettlement. Noticeably, when IDPs return, they are referred to as ‘returnees’, which envisages that they continue to have special needs and vulnerabilities. That is why national authorities have responsibility to facilitate and assist IDPs.

Pursuant to the Guiding Principles, return or resettlement must occur voluntarily, in safety and with dignity (principle 28); those returning or resettling shall not be discriminated against as a result of having been displaced (principle 29.1); the authorities have a duty to assist IDPs to recover or receive compensation for property and possessions destroyed or of which they were dispossessed as a result of their displacement (principle 29.2). Thus, the Guiding Principles propose *solutions-based approach* linked to the fulfilment of certain conditions for return and resettlement to be considered effective.

⁸² Summary Report, Roundtable on when internal displacement ends, The Brookings Institution, Washington, D.C., 22 April 2002 p.2, available at: http://www.brookings.edu/fp/projects/idp/conferences/200409_Displacement-Ends.pdf [Accessed 24 May, 2016]

⁸³ Erin Mooney, When does internal displacement end?, *Forced Migration Review* (17 May 2003), p.5.

The second approach focuses on one of the *refugees' cessation clauses* as a sign of the end of displacement. It analyses the causes of displacement and considers whether the circumstances changed in comparison with those that had forced people to leave. However, this analogy has limited applicability because the Refugee Convention requires fundamental⁸⁴, durable and effective changes in the country of origin⁸⁵, whereas for IDPs, a local rather than countrywide approach to the issue of 'changed circumstances' would be more relevant⁸⁶.

A third approach is *needs-based* and focuses on the continued existence of IDPs specific needs and vulnerabilities. According to this approach, IDPs will keep their classification as long as they continue to have specific needs arising from the fact that they were displaced. The displacement will end when specific needs and vulnerabilities cease to exist. Accordingly, restoration of IDPs rights on par with the rest of the population and their non-discrimination for having been displaced indicates the end of displacement.

As can be seen, these three approaches are not mutually exclusive but overlapping.⁸⁷ The change of the circumstances allows return, after which non-discrimination ought to be ensured, which cannot happen without addressing displacement related needs. It seems that the combination of needs-focused and solution-based approaches reflected in the Guiding Principles can be the most efficient way to determine the end of displacement.

Dr. Patricia Weiss Fagan states that integration is the key criterion of when displacement ends.⁸⁸ To answer the question when IDPs are integrated, it is necessary to compare the situation of the IDP with that of the local population. The UNHCR states that three types of integration need to be analysed – legal, social and economic.⁸⁹ Legal elements of integration include land and property rights; freedom of movement and protection against forcible return; non-discrimination; and the ability to exercise citizenship rights. Social integration provides the right to participate fully and equally in public affairs at all levels, as well as equal access

⁸⁴A complete political change, significant reforms altering the basic legal or social structure of the state, democratic elections, declarations of amnesties, repeal of oppressive laws and dismantling of former security forces can constitute fundamental change (See. UNHCR Standing Committee, Note on the Cessation Clause, 30 May 1997, EC/47/SC/CRP.30, para.20, available at: <http://www.unhcr.org/excom/standcom/3ae68cf610/note-cessation-clauses.html>).

⁸⁵ UNHCR Standing Committee, Note on the Cessation Clause, EC/47/SC/CRP.30 (30 May 1997), para.19.

⁸⁶ Summary Report, Roundtable on when internal displacement ends, The Brookings Institution, Washington, D.C., 22 April 2002 p.5, available at:

http://www.brookings.edu/fp/projects/idp/conferences/200409_Displacement-Ends.pdf [Accessed 24 May, 2016]

⁸⁷ Erin Mooney, When does internal displacement end?, *Forced Migration Review* (17 May 2003), p.6.

⁸⁸ The Brookings Institution-University of Bern, Project on Internal Displacement: When displacement ends, A Framework for durable solutions, June 2007, available at: <http://www.refworld.org/pdfid/469f6bed2.pdf>.

⁸⁹The Brookings Institution-University of Bern, Addressing Internal Displacement: Framework for National Responsibility, April 2005, p.63, available at: http://www.brookings.edu/fp/projects/idp/20050401_nrframework.pdf.

to public services, such as welfare, public housing and education. The economic dimension of integration would require equality of access to employment and income-generating opportunities. Hence, reintegration is a time-consuming process that would progress in parallel with general developments in a country.

Displacement ends when IDPs have found durable solutions, with which agrees co-director of the Brookings-LSE project on internal displacement, Elizabeth Ferris.⁹⁰ Undoubtedly, protection of IDPs entails ensuring durable solutions. But what exactly are durable solutions and how they can be achieved?

According to the principle 3 of the Guiding Principles, national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction. The Framework for National Responsibility identifies 12 steps for effective response to the internal displacement: prevent or mitigate displacement; raise national awareness of the problem; collect data on the numbers and conditions of IDPs; support training on internal displacement and the Guiding Principles; create a national legal framework for upholding the rights of IDPs; develop a national policy on internal displacement; designate an institutional focal point on IDPs; encourage national human rights institutions to integrate internal displacement into their work; allocate adequate resources to the problem; ensure the participation of IDPs in decision-making; support lasting solutions for the displaced; and cooperate with the international community when national capacity is insufficient.⁹¹ Only one of these steps is dealing with durable solutions directly; however, others contribute to ensuring them.

Durable solutions for IDPs can be defined as a gradual and complex process, which diminishes displacement-related needs, vulnerabilities and allows enjoyment of human rights without displacement-based discrimination.⁹² As was mentioned before, there are three types of durable solutions to internal displacement: return to the place of origin, local integration in the areas in which IDPs initially take refuge or settlement in another part of the country. There is no hierarchy among them.⁹³ Hence, return and re-establishment of the status quo should not be considered as the only durable solution possible as it can be reached in another place than former place of residence. It creates possibility to achieve durable solution even in cases of protracted conflict and not to put IDPs in the state of continued dependency.

⁹⁰Elizabeth Ferris, 'Durable Solutions: When Does Displacement End?' (2007), available at: <http://www.brookings.edu/research/articles/2007/12/displacement-ferris> [Accessed 23 May 2016]

⁹¹ Erin Mooney, 'When does internal displacement end?', *Forced Migration Review* (17 May 2003).

⁹² Ibid.

⁹³ Brookings-Bern Project on Internal Displacement, IASC Framework on Durable Solutions for IDPs, April 2010, p.12, available at: <http://www.refworld.org/docid/4c5149312.html>.

Noticeably, IDPs should determine by themselves, on the basis of their situation, what solution to choose.

When assessing whether and to what extent a durable solution has been achieved the following need to be considered whether:

- 1) the national authorities have established the conditions for safe and dignified return or resettlement;
- 2) displaced persons are able to exercise their rights on the same basis as other nationals;
- 3) international observers are able to provide assistance and monitor the situation of the formerly displaced;
- 4) durable solution is sustainable.⁹⁴

According to the Framework on durable solution, they are achieved when IDPs enjoy without discrimination long-term safety, security and freedom of movement; an adequate standard of living, including at a minimum access to adequate food, water, housing, health care and basic education; access to employment and livelihoods; access to effective mechanisms that restore their housing, land and property or provide them with compensation; access to and replacement of personal and other documentation; voluntary reunification with family members separated during displacement; participation in public affairs at all levels on an equal basis with the resident population; effective remedies for displacement-related violations, including access to justice, reparations and information about the causes of violations.⁹⁵ These factors are interlinked and need to be assessed in the light of specific situation and context of the country.

Physical movement, either return or resettlement, does not amount to a durable solution as IDPs will continue to have human rights concerns linked to their displacement. At the same time a durable solution can be achieved but IDPs can still face needs or human rights concerns, which are not linked with their displacement. To determine whether or not the needs are displacement-related the following should be examined:

- whether the need or human rights concern is the consequence of events causing displacement or resulting from displacement;
- whether it results from the displaced person's absence from his/her home;
- whether it is related to conditions in areas of return or resettlement that pose an obstacle to the IDP being able to choose a durable solution;

⁹⁴Elizabeth Ferris, 'Durable Solutions: When Does Displacement End?' (2007), available at: <http://www.brookings.edu/research/articles/2007/12/displacement-ferris> [Accessed 23May 2016]

⁹⁵ Brookings-Bern Project on Internal Displacement, IASC Framework on Durable Solutions for IDPs, April 2010, p.12, available at: <http://www.refworld.org/docid/4c5149312.html>.

- or whether it is a consequence of a problem disproportionately affecting IDPs.⁹⁶

In fact, when a person's displacement-specific needs are met and s/he can enjoy her/his rights without displacement-specific discrimination durable solution is achieved.⁹⁷

Assuredly, this process is complex and requires engagements of different factors.⁹⁸ According to the principle 30 of the Guiding Principles authorities shall grant and facilitate for international humanitarian organizations and other appropriate factors rapid and unimpeded access to IDPs to assist in their return or resettlement. It is worth saying that they play complementary role only.

Additionally, when searching for durable solution human rights-based approach plays significant part as it ensures that IDPs are in a position to make a voluntary and informed choice on what durable solution they would like to pursue; participate in the planning and management of durable solutions; have access to humanitarian and development actors and effective monitoring mechanisms; and in cases of displacement caused by conflict or violence, peace processes and peace building involve IDPs and reinforce durable solutions.⁹⁹ That is why the rights and responsibilities set out in the Guiding Principles must be respected in the search for durable solutions.

The Framework for durable solutions determine that all strategies and activities aimed at supporting the search for durable solutions have to be based upon different principles, among them are that the rights, needs and legitimate interests of IDPs should be the primary considerations guiding all decisions relating to durable solution; all relevant factors need to respect IDPs' rights to make an informed and voluntary decision on what durable solution to pursue; a person who choose to resettle when the return is not possible does not lose the right to return once return becomes feasible; under no circumstances IDPs should be encouraged or compelled to return or relocate to areas where their life, safety, liberty or health would be at risk; IDPs, who return or resettle must not be subject to displacement-related discrimination; IDPs continue to be protected by national and international human rights even after they have achieved a durable solution.¹⁰⁰

Thus, reaching durable solutions is multifaceted and a gradual process through which the need for specialized protection diminishes and IDPs achieve sustainable integration at the place of origin or elsewhere.

⁹⁶ Brookings-Bern Project on Internal Displacement, IASC Framework on Durable Solutions for IDPs, April 2010, available at: <http://www.refworld.org/docid/4c5149312.html>.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

4. LEGAL FRAMEWORK FOR THE PROTECTION OF INTERNALLY DISPLACED PERSONS

4.1. Guiding Principles on Internal Displacement

To start with, the concept of internal displacement based on the fact that IDPs are within borders of their country and as the result are entitled to the same rights and freedoms under domestic and international law as other citizens. This does not preclude the registration on the domestic level to identify those who are displaced and need special assistance, but the lack of it would not deprive IDPs of their rights under international human rights and humanitarian law.¹⁰¹ From the practical point of view; however, IDPs rarely enjoy the same rights and freedoms because displacement by its nature entails deprivations of multiple rights. It separates families, ruins social ties, terminates employment relationships, and deprives vulnerable categories of people of social assistance.¹⁰²

Furthermore, the protection of IDPs is complicated because internal displacement can happen during peacetime as a result of natural or man-made disasters or disturbances that do not reach the threshold of internal armed conflict where human rights law applies; as well as during non-international armed conflict when basic provisions of humanitarian and human rights law applies; and during interstate armed conflict where the detailed provisions of international humanitarian law and many essential human rights become operative.¹⁰³ Hence, the Guiding Principles synthesized a number of applicable norms of international human rights and humanitarian law into principles, which respond to the specific needs of IDPs. The legal basis of each of the principles is reflected in the *Compilation and Analysis of Legal Norms*¹⁰⁴, whereas the philosophical foundation behind them is the concept of sovereignty as a form of responsibility.

Even though the Guiding Principles is not a legally binding instrument, their approval was and still remains an important achievement for assistance and protection of IDPs. Firstly, back in 1998 there were no governmental supports for the development of a legally binding treaty on IDPs, which is still relevant today. Secondly, treaty making is time-consuming, whereas there was a need to address the problems of IDPs immediately. Thirdly, there were

¹⁰¹ Kälin, p.21.

¹⁰² UNCHR, *Compilation and Analysis of Legal Norms, Report of the Representative of the Secretary-General on Internally Displaced Persons*, UN Doc E/CN.4/1996/52/Add.2 (5 Dec 1995), para.9.

¹⁰³ Kälin, p.7.

¹⁰⁴ ECOSOC, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1995/57*, available at: http://id.cdint.org/content/documents/Compilation_and_analysis_of_legal_norms.pdf.

already a lot of provisions in international human rights law and humanitarian law relevant to the protection needs of IDPs, which just required consolidation in one document.¹⁰⁵

In 2005, Kofi Annan stated that the Guiding Principles should be accepted as ‘the basic international norm for protection’ of IDPs and their adoption should be promoted through national legislation.¹⁰⁶ Also, the 2005 World Summit declaration recognized the principles as ‘an important international framework’ for IDPs protection.¹⁰⁷ They were acknowledged by the Inter-American Commission on Human Rights of the Organization of American States, the Organization of African Unity, and the OSCE.¹⁰⁸ The Committee of Ministers of the Council of Europe recommended applying them ‘to all internally displaced persons, including persons displaced from their homes or places of habitual residence due to natural or man-made disasters.’¹⁰⁹ Besides, the Protocol on the Protection and Assistance to Internally Displaced Persons, adopted in 2006 by the Member States of the International Conference on the Great Lakes, it was the first document that incorporated the Guiding Principles’ definition of IDPs into binding international law.¹¹⁰ The reason for such approval was that they reflect existing international law, which was already negotiated and accepted by states.¹¹¹

The Guiding Principles approach displacement from the perspective of the needs of IDPs¹¹² and address all phases of displacement - protection from displacement, protection and assistance during displacement and durable solutions. Pursuant to principle 4, they shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria. They establish that IDPs shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced (principle 1.1).

Among the rights covered by the Guiding Principles are the right to request and to receive protection and humanitarian assistance from national authorities; the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence; the

¹⁰⁵ Cohen, p.92.

¹⁰⁶ UNGA, Report of the Secretary-General, In larger freedom: towards development, security and human rights for all (2010), A/59/2005.

¹⁰⁷ UNGA, Res 60/1, 2005 World Summit Outcome, A/RES/60/1 (24 October 2005), para. 132.

¹⁰⁸ Kälin, p.13.

¹⁰⁹ Council of Europe, Committee of Ministers, Recommendation Rec(2006)6 to member states on internally displaced persons, para.1, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d8265.

¹¹⁰ Kälin, p.6.

¹¹¹ Cohen, p.93.

¹¹² Kälin, p.2.

right to respect of his or her family life; the right to an adequate standard of living; right to property and possessions; the right to seek freely opportunities for employment and to participate in economic activities; the right to associate freely and participate equally in community affairs, the right to vote and to participate in governmental and public affairs etc.

In relation to the humanitarian assistance, the Guiding Principles determines that humanitarian organizations and other appropriate actors have the right to offer their services in support of IDPs. Although such assistance has a complementary nature, the consent in these cases shall not be arbitrarily withheld; particularly when national authorities are unable or unwilling to provide the required assistance.

All in all, even though the Guiding Principles as such are not a binding instrument, they reflect and consistent with international law and address specific needs of IDPs. That is why governments, UN agencies, regional bodies and civil society organizations apply them as a basis for policies and laws on internal displacement.

4.2. National legal framework and policies

National legislation plays an important role in safeguarding protection of IDPs, which make its compliance with international standards of great importance. IDPs shall enjoy the same rights and freedoms as other citizens of the country; however, due to the fact of displacement they have needs and increased vulnerability, which are addressed by laws specifically focused on situation of internal displacement.

The Law of Ukraine ‘On ensuring of rights and freedoms of internally displaced persons’ adopted on 20th of October, 2014, establishes guarantees of rights, freedoms and legitimate interests of IDPs in Ukraine. After all the amendments made following its adoption, currently it guarantees comprehensive protection of IDPs from Crimea and Eastern Ukraine. The law provides that not only citizen of Ukraine, but also foreigners or stateless persons staying on territory of Ukraine on legal grounds is entitled to permanent residence in Ukraine can be IDPs. According to Article 2 of this Law, Ukraine takes all available measures under the Constitution and laws of Ukraine, international treaties for protection of and adherence to rights and freedoms of IDPs and creates conditions for the voluntary return of such persons to their abandoned residence or integration at the new place. Provisions of this law guarantee the establishment of consolidated database of IDPs (Article 4-1) and prohibit discrimination on the bases of internal displacement (Article 14). It ensures different rights of IDPs that correspond to the provisions of Guiding Principles, for example a right to employment (principle 22 (1b); Article 7), the right to vote (principle 22 (1d); Article 8), the right to

family unity (principle 17.2; Article 9); the right to information on the fate and whereabouts of missing family members and relatives (principle 16; Article 9); the right to proper conditions of person's permanent or temporary accommodation (principle 7.2; Article 9).

On the 17th of February, 2016, the first parliamentary hearings in Ukraine were held dedicated to the human rights of IDPs since the beginning of internal displacement in 2014. Recommendations made afterwards emphasize on the gaps in IDPs protection and encourage the parliament to consider registered drafts law, which aim to address these gaps and ensure simplified procedure for IDPs in accessing their rights. Among them are: the draft law No 3844 on amendments to the tax code of Ukraine regarding rental of housing by IDPs, a draft law No 2167 on amendments to the law of Ukraine 'On ensuring the rights and freedoms of internally displaced persons' about compensation for the value of the IDPs damaged property; a draft law No 2373 "On amendments to the Law of Ukraine 'On free legal assistance', which ensure the right of IDPs to free legal assistance, a draft Law No 2501a-1, which guarantee the right to vote in local elections for IDPs.

Considering that the Cabinet of Ministers of Ukraine coordinate and supervise activities of executive bodies in taking necessary measures to ensure the rights and freedoms of IDPs, there are a number of its resolutions dealing with procedural matters linked to IDPs rights. To name some of them: resolution No 21 'On procedure of rendering of humanitarian assistance to the population of Donetsk and Luhansk regions'¹¹³; resolution No 637 'On welfare payments to internally displaced persons'¹¹⁴; resolution No 509 'On registration of internally displaced persons'¹¹⁵; resolution No 505 'On providing monthly targeted financial support to internally displaced persons from the temporarily occupied territory of Ukraine and anti-terrorist operation area to cover livelihood, including housing and utilities'¹¹⁶; resolution No 213 'On temporary accommodation of families displaced from Autonomous Republic of Crimea and the city of Sevastopol'¹¹⁷.

On the 20th of April, 2016, the Cabinet of Ministers of Ukraine decided to establish the Ministry of Ukraine on temporarily occupied territories and internally displaced persons,

¹¹³ Cabinet of Ministers of Ukraine, Resolution, Procedure of rendering of humanitarian assistance to the population of Donetsk and Luhansk regions, January 30, 2015, No 21.

¹¹⁴ Cabinet of Ministers of Ukraine, Resolution, On welfare payments to persons displaced from the temporarily occupied territory of Ukraine and antiterrorist operation conduct districts, 5 November 2014, No 637.

¹¹⁵ Cabinet of Ministers of Ukraine, Resolution, On registration of internally displaced persons from the temporarily occupied territory of Ukraine and anti-terrorist operation area, 1 October 2014, No 509.

¹¹⁶ Cabinet of Ministers of Ukraine, Resolution, On providing monthly targeted financial support to internally displaced persons from the temporarily occupied territory of Ukraine and anti-terrorist operation area to cover livelihood, including housing and utilities, 1 October 2014, No 505.

¹¹⁷ Cabinet of Ministers of Ukraine, Resolution, On temporary accommodation of families displaced from Autonomous Republic of Crimea and the city of Sevastopol, 25 June 2014, No 213.

which will play the role of a central coordinating body to address the challenges of internal displacement in Ukraine. Regarding state policies, they are regulated by Comprehensive national programme for support, social adaptation and reintegration of citizens of Ukraine internally displaced from the temporarily occupied territory of Ukraine and anti-terrorist operation conduct area to other regions of Ukraine for the period until 2017; the Plan of Actions for employment and training of IDPs for 2015-2016.

5. THE GAPS BETWEEN INTERNATIONAL STANDARDS AND NATIONAL LAW AND PRACTICES ON PROTECTION OF INTERNALLY DISPLACED PERSONS

5.1. The right to vote

The right to vote is one of the fundamental political rights, which is guaranteed by different international documents. According to Article 21 of the UDHR:

'1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. [...]3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures'.

Article 25 of the ICCPR states that:

'Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: [...] (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors'.

States 'must take effective measures to ensure that all persons entitled to vote are able to exercise this right'.¹¹⁸ The right to vote may be subject to certain restrictions, which shall be objective and reasonable.¹¹⁹ For example, the OSCE notices that residence in the state may be required for the exercise of this right.¹²⁰ Such conditions can be justified by several factors: firstly, the assumption that a non-resident citizen is less directly concerned with his country's problems and has less knowledge of them; secondly, it is impracticable for the parliamentary candidates to present the different electoral issues to citizens abroad; thirdly, the connection

¹¹⁸ HRC, CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, 12 July 1996, CCPR/C/21/Rev.1/Add.7.

¹¹⁹ Ibid.

¹²⁰ OSCE, Existing Commitments for Democratic Elections in OSCE Participating States, 6 October 2003, available at: <http://www.osce.org/odihr/elections/13956>.

between the right to vote in elections and the fact of being directly affected by the acts of elected political bodies; fourthly, the legitimate reason to limit the influence of citizens living abroad in elections on issues which mainly affect persons living in the country.¹²¹ At the same time, the OSCE emphasized that ‘the absence of a permanent residence should not prevent an otherwise qualified person from being registered as a voter’.¹²² However, in order to vote in local or regional elections, a reasonable period of residence in the area may be required.¹²³

Concerning internally displaced persons they should take appropriate legal and practical measures to enable IDPs to effectively exercise their right to vote in national, regional or local elections and to ensure that it is not infringed by obstacles of a practical nature.¹²⁴ According to Principle 22 of the Guiding Principles internally displaced:

‘whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right’.

Article 26 of the ICCPR stresses that: ‘[...] the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour [...] or other status’. According to the paragraph 52 of the Compilation and analysis of legal norms, ‘other status’ shall be interpreted broadly and ‘non-discrimination clauses thus appear to ban discrimination against internally displaced persons based on their status as such’. Corresponding provisions can be found in the principle 1.1 of the Guiding Principles, which state that IDPs ‘shall enjoy in full equality, the same rights and freedoms under international and domestic law as do other persons in their country’ and ‘shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced’. Accordingly, the principle of universal and equal suffrage and non-discrimination guarantee the right to vote to all internally displaced citizens who meet the voter eligibility criteria specified in national electoral legislation.¹²⁵ Notwithstanding

¹²¹ *Hilbe v. Liechtenstein*, ECHR 1999, No. 31981/96.

¹²² OSCE, Existing Commitments for Democratic Elections in OSCE Participating States, 6 October 2003, available at: <http://www.osce.org/odihr/elections/13956>.

¹²³ *Ibid.*

¹²⁴ Council of Europe, Committee of Ministers, Recommendation Rec(2006)6 to member states on internally displaced persons, para.9, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d8265.

¹²⁵ Brookings-Bern Project on Internal Displacement, Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges, January 2010, p.514, available at: <http://www.refworld.org/docid/4b6c164e2.html> [Accessed 26 May 2016]

this, in practice IDPs encounter a number of obstacles to exercising this right, inter alia lack of documentation, displacement-related discrimination, insecurity and acts of intimidation, difficulties with physical access to polling stations, lack of information and issues of transparency.¹²⁶

IDPs can lose their documents as the result of displacement, which does not allow them to register to vote as it requires proof of identity. At the same time replacement of documents can be difficult and require the return to the habitual residence. Also, IDPs' right to vote can be affected by discrimination on different stages of the electoral process, for instance regarding the access to information on electoral procedures in a language IDPs understand¹²⁷. More than that, exercising the right to vote under the conditions of conflict-induced displacement can entail risks to physical security for IDPs. Likewise access to polling stations can be impeded due to insecurity or there can be difficulties in disseminating election-related information among IDPs.

The most concerns, however, derive from residency requirement, which creates the genuine link between the right to vote and the place of residence. Usually national electoral legislation sets forth that citizens can only participate in the election in the constituency in which they permanently reside, which is problematic for IDPs who by definition leave or flee their place of residence.¹²⁸ Whereas in direct presidential elections, single-constituency parliamentary elections, or national referendums, a change of residence will not affect IDPs, in local as well as multiple-constituency parliamentary elections, residency requirements can cause difficulties.¹²⁹

According to the Code of good practice, in electoral matters adopted by the Venice Commission a residence requirement for local and regional elections is not an incompatible priority with the principle of universal suffrage, if the residence period does not exceed a few months.¹³⁰ Whereas in case of absentee voting, residency requirements can mean that the

¹²⁶Brookings-Bern Project on Internal Displacement, Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges, January 2010, p.514, available at: <http://www.refworld.org/docid/4b6c164e2.html> [Accessed 26 May 2016]

¹²⁷Handbook of the protection of internally displaced persons, 2007.p.264, available at: <http://www.internal-displacement.org/assets/publications/2007/200712-idp-protection-handbook-thematic-en.pdf> [Accessed 26 May 2016]

¹²⁸ Brookings-Bern Project on Internal Displacement, Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges, January 2010, p.515, available at: <http://www.refworld.org/docid/4b6c164e2.html>, [Accessed 26 May 2016]

¹²⁹ Ibid.

¹³⁰Venice Commission, Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report, October 2002, CDL-AD (2002) 23 rev, p. 14-15.

voter must have resided within the constituency during a defined time period in the past in order to remain eligible to vote from outside of the constituency.¹³¹

Assuredly, residency requirement has direct impact on internally displaced. On the one hand, whether IDPs can exercise the right to vote for their previous constituency (in person or by absentee ballot) may be determined by the required date of last residence in the constituency.¹³² Importantly, in order to safeguard the right to vote the length of absence should allow any IDPs to participate in the election so long as they have not permanently resettled elsewhere.¹³³ On the other hand, if IDPs want to vote in the current constituency, the residency requirement ensures an effective link to the place. In this regards, it shall be considered how long the IDP has been in current residence and how they came to be there when determining the date for proving residence.¹³⁴ Unfortunately, the length of residence in the current constituency can be more political than human rights matter.

Ukrainian legislation ensures the rights to vote for all citizens, who have met voter eligibility criteria. Article 38 of the Constitution of Ukraine states that:

'citizens have the right to participate in the administration of state affairs, in all Ukrainian and local referendums, to freely elect and to be elected to bodies of state power and bodies of local self-government'.

Citizens of Ukraine as old as eighteen years old on the day of elections and referendums have the right to vote.¹³⁵ Pursuant to the Law of Ukraine 'On ensuring of rights and freedoms of internally displaced persons' internally displaced person – citizen of Ukraine shall enjoy his/her voting right at the elections of the president of Ukraine, members of Parliament of Ukraine, local elections, state referenda through changing of voting place without changing of voting address. However, despite these provisions, IDPs are not permitted to take part in the local elections according to their current places of residence.

Article 3 of the Law of Ukraine 'On local elections' establishes that a person can only vote in his/her place of residency registration, which means that IDPs will not be able to participate in the elections in their place of displacement unless they have residency

¹³¹ Brookings-Bern Project on Internal Displacement, Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges, January 2010, p.527-528, available at: <http://www.refworld.org/docid/4b6c164e2.html>, [Accessed 26 May 2016]

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Brookings-Bern Project on Internal Displacement, Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges, January 2010, p.527-528, available at: <http://www.refworld.org/docid/4b6c164e2.html> [Accessed 26 May 2016]

¹³⁵ Constitution of Ukraine, 28 June 1996, article 70.

registration stamp in their passport.¹³⁶ This regulation reflects the heritage of the registration system during the Soviet Union, which linked rights to an individual's approved place of residence.¹³⁷ Furthermore, in autumn 2014, IDPs from Donetsk, Luhansk regions and Crimea were not able to vote at parliamentary elections in single-mandate election districts.¹³⁸ Even though voters can change the place of voting (without changing the voting address) to another polling station outside the single-mandate election district where they registered, in this case according to the regulations¹³⁹ they have the right to vote only in a national multi-member election district. This provision affects IDPs as well as wider population, but unlike other citizens who have possibility to return to their place of registration, IDPs do not have such option. And if IDPs get registration at the place of current residence (the place where they moved) he/she automatically loses the status of internally displaced and all the entitlements it entails as IDP would not be registered in Donbas, Luhansk regions or Crimea.

The situation in Georgia was alike until 2003, IDPs there could vote at parliamentary elections in a national wide multi-member election district¹⁴⁰, but they did not have the right to participate in local and parliamentary elections in single-mandate election districts.¹⁴¹ According to the Law of Georgia 'On the election of local representative bodies – Sakrebulo' from 1998, IDPs did not have the right to vote at the local elections because their voting rights were linked to place of residence.¹⁴² In order to vote, IDPs had to register their temporary place of residence as a new place of permanent residence, which according to the law on IDPs effective at that time terminated the status of IDPs and all benefits it entails. Even though, in 2001 the Parliament of Georgia adopted an Organic Law on the United Election Code which allowed the IDPs to vote in local elections at their temporary place of

¹³⁶Protection Cluster, Update on IDPs registration, 2015, available at: https://www.humanitarianresponse.info/ru/system/files/documents/files/ukraine_pc_registration_update_august_en_0.pdf [Accessed 25 May 2016]

¹³⁷ Erin Mooney, Balkees Jarrah, 'The Voting Rights of Internally Displaced Persons: the OSCE Region', A occasional Paper, November 2004, pp. 32-41.

¹³⁸ 225 members of the Supreme Council of Ukraine are elected on the basis of a proportional system in a national wide multi-member selection district under electoral lists of MP candidates from political parties, other 225 members are elected on the basis of a simple majority system in single-mandate election districts.

¹³⁹ Central Election Commission, Resolution № 893, On providing temporary change of the place of voting without changing voting address (*Про забезпечення тимчасової зміни місця голосування виборця без зміни його виборчої адреси*), 13.09.2012 № 893.

¹⁴⁰ Georgia has a mixed electoral system for parliamentary election consisting of proportional and majoritarian electoral systems.

¹⁴¹Elene Nizharadze, 'The Right of IDPs to Vote: International Practice, Options for Ukraine and Recommendations', 2015, available at: <https://www.scribd.com/doc/293915106/Elene-Nizharadze-s-Presentation-Georgia-The-Right-of-IDPs-to-Vote-International-Practice-Options-for-Ukraine-and-Recommendations> [Accessed 24 May 2016]

¹⁴² Ibid.

residence,¹⁴³ permanent registration in another part of the country still remained one of grounds for terminating the status of IDP and all the benefits pertaining to it.¹⁴⁴ It was one of the main reasons why IDPs were not willing to vote at a local election.

In 2003, the amendments to the Electoral Code enabled IDPs to vote in multiple-constituency parliamentary elections at their current places of residence. Also, the Constitutional Court of Georgia declared unconstitutional the provision of the national law on IDPs concerning the termination of IDP status in the event of permanent registration in any other part of the country.

As of today, all types of elections are regulated by the Electoral Code of Georgia adopted in 2015. Pursuant to Article 31 of the Code, IDPs included into the voters' list as other citizens:

*'the unified list of voters shall include the following data of voters: [...] e) actual place of residence (for IDPs from the occupied territories of Georgia [...]) 3. All data shall be entered in the unified list of voters according to the place of their registration. IDPs from the occupied regions of Georgia shall be entered in the unified list of voters according to their actual place of residence'.*¹⁴⁵

Georgian IDPs take part in presidential, parliamentary and local elections according to their current place of residence on the same basis as other citizens. While on the day of election the voter shall present a Georgian citizen's ID card or passport, an IDP from the occupied territories of Georgia shall additionally present an IDP card.¹⁴⁶ Importantly, the exercise of this right does not lead to termination of the IDP status and does not affect their registration at the permanent place of residence.¹⁴⁷ Hence, IDPs are able to exercise their right to vote and take decisions that influence their lives both at local and national level, which facilitates integration of IDPs. Yet, IDPs do not have the possibility to choose whether to vote at their current or permanent place of residence.¹⁴⁸

To sum up, there are no grounds in the international law, which can justify the deprivation of IDPs right to vote in case necessary conditions are achieved. The right to return to place of

¹⁴³ Elene Nizharadze, *The Right of IDPs to Vote: International Practice, Options for Ukraine and Recommendations?*, 2015, available at: <https://www.scribd.com/doc/293915106/Elene-Nizharadze-s-Presentation-Georgia-The-Right-of-IDPs-to-Vote-International-Practice-Options-for-Ukraine-and-Recommendations> [Accessed 24 May 2016]

¹⁴⁴ Ibid.

¹⁴⁵ Electoral Code of Georgia, Article 31, CDL-REF(2016)004 (27 October 2016).

¹⁴⁶ Ibid, Article 65 (b).

¹⁴⁷ Nizharadze, p.18.

¹⁴⁸ Which is not a case in Bosnia and Herzegovina, where the law allows IDPs to choose whether to vote on their current or permanent place of residence provided that he/she was registered at the current place of residence no later than six months before the election day. This provision assists in reconciliation and reintegration of the IDPs at the habitual place of residence before the displacement. (See. Article 19.8 of the Election Law of Bosnia and Herzegovina).

origin and the right to vote at the local/parliamentary election at the current place of residence are not mutually exclusive.¹⁴⁹ It is reasonable that in situations of protracted displacement IDPs are willing to participate in the political life, which will assist them in integration to the local community and enhance their influence on issues which affect their life.

5.2. The right to housing

All individuals are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors,¹⁵⁰ but international human rights law is not obligated to build housing for everyone. However, states need to create conditions to ensure that everyone can access housing in accordance with international standards¹⁵¹ and take appropriate measures towards the full realization of the right to the maximum of the country's available resources.

This right is recognized in different international human rights instruments as a component of the right to an adequate standard of living. In particular, pursuant to the Article 25 (1) of the UDHR everyone has the right to an adequate standard of living, which includes housing. Moreover, Article 11 of the ICESCR sets forth:

'The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent'.

The right to adequate housing should not be interpreted in a narrow sense 'which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity' but 'it should be seen as the right to live somewhere in security, peace and dignity'.¹⁵² The right not to be subjected to arbitrary or unlawful interference with their home constitutes another dimension in defining the right to adequate housing.¹⁵³

In addition to the general provisions, there are number of documents addressing the right to housing in case of internal displacement. For example, the Rule 131 of the customary

¹⁴⁹ Nizharadze, p.10.

¹⁵⁰ The International Covenant on Economic, Social and Cultural Rights, Article.2.

¹⁵¹ UNHCR ,Handbook on Housing and Property Restitution for Refugees and Displaced Persons, Implementing the 'Pinheiro Principles', March 2007, p.49, available at: http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf [Accessed 23 May, 2016]

¹⁵² UN CESCR, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, para. 7.

¹⁵³ ICCPR, art. 17.

international humanitarian law states that ‘in case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition’¹⁵⁴. According to the principle 18 of the Guiding Principles:

‘all internally displaced persons have the right to an adequate standard of living. At a minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide IDPs with and ensure safe access to, inter alia, basic shelter and housing’.

Principles on housing and property restitution for refugees and displaced persons (Pinheiro Principles)¹⁵⁵ emphasize that everyone has the right to adequate housing and states should adopt positive measures aimed at alleviating the situation of displaced persons living in inadequate housing.¹⁵⁶ Taking it into account, the state has duties to take measures to ensure security of tenure, to prevent discrimination in the housing sphere, to guarantee housing affordability, to regulate landlord-tenant relations and secure access to housing suitable for the needs of vulnerable groups.¹⁵⁷ Even though adequacy of housing is determined by social, economic, cultural, climatic and other factors, the General Comment No. 4 underlines that it is possible to identify integral aspects of the right in any context. Among them are legal security of tenure, availability of services, materials, facilities and infrastructure; affordability, habitability, accessibility, location and cultural adequacy.¹⁵⁸

National legislation of Ukraine pertaining to housing inherited a number of Soviet-era social protection provisions. According to Article 47 of Ukrainian Constitution:

‘Everyone has the right to housing. The State creates conditions that enable every citizen to build, purchase as property, or to rent housing. Citizens in need of social protection are

¹⁵⁴ ICRC, Customary International Humanitarian Law, available at: https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter38_rule131

¹⁵⁵ In 1997 the Committee on the Elimination of Racial Discrimination proposed to the Sub-Commission on the Promotion and Protection of Human Rights to study ‘the return of displaced persons’ property.’ In 1998 Sub-Commission adopted resolution 1998/26 on Housing and Property Restitution in the Context of the Return of Rights for Refugees and Internally Displaced Persons. In 2001 the Sub-Commission requested Sub-Commission expert, Paulo Sérgio Pinheiro, to prepare a working paper on the topic. After appointing Pinheiro as Special Rapporteur on Housing and Property Restitution for Refugees and Internally Displaced Persons in 2002, the Sub-Commission asked him to prepare draft principles on housing and property restitution based on the initial conclusions of the preliminary study. The final text was endorsed on by the Sub-Commission on 11 August 2005. (See. Centre on Housing Rights and Evictions, The Pinheiro Principles -United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, p.6, available at: <http://2001-2009.state.gov/documents/organization/99774.pdf>).

¹⁵⁶ Principle 8 of the Pinheiro Principles.

¹⁵⁷ UNHCR, Handbook on Housing and Property Restitution for Refugees and Displaced Persons, Implementing the ‘Pinheiro Principles’, March 2007, p.49, available at: http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf [Accessed 23 May, 2016]

¹⁵⁸ UN CESCR, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23.

provided with housing by the State and bodies of local self-government, free of charge or at a price affordable for them, in accordance with the law’.

It guarantees the right of everyone to enjoy an adequate standard of living, which entails adequate housing (Article 48). Also, in accordance with the Housing Code of Ukrainian Soviet Socialist Republic, which is still applicable today, Ukrainian citizens have the right to housing (Article 1).

The right to housing for IDPs envisages in the Law of Ukraine ‘On ensuring of rights and freedoms of internally displaced persons’. Article 9 of the Law emphasizes that IDPs have the right to free temporary accommodation (with payment for housing services) within six months from the date of registration and the right to proper conditions of permanent or temporary accommodation.¹⁵⁹ The local state administrations within their powers shall provide IDPs with appropriate housing or social housing for temporary use with utilities being paid by internally displaced.¹⁶⁰ Nonetheless, there is no legal procedure for implementation of social rental housing,¹⁶¹ which does not make this provision applicable on practice.

The UNECE underscores that only 7 % of residential housing stock in Ukraine has been built since 1991, 42 % was built before 1960 and require major repairs.¹⁶² According to the national legislation there are number of categories, which require improvement of living conditions, among them are people living in substandard accommodation, overcrowded housing, sublease tenants in municipal or state properties, hostel residents, those renting privately for more than five years and people with special needs.¹⁶³ As of 2010, 1.139 million Ukrainian households were identified as needing housing, 779.700 of which have been in the housing queue for more than 10 years, while the average waiting period is estimated to exceed 100 years.¹⁶⁴

¹⁵⁹ Law of Ukraine ‘On ensuring of rights and freedoms of internally displaced persons’, 24.12.2015 № 921-VIII.

¹⁶⁰ Ibid.

¹⁶¹ USAID Public Private Partnership Development Program, Facilitating Private Sector Participation in Delivery of Humanitarian Aid and Infrastructure Rehabilitation in the Housing Sector – Laying the Foundation for PPPs, July 2015, p. 33, available at: http://ppp-ukraine.org/wp-content/uploads/2015/08/FHI-360-report-PPP-Housing-UA-150728_Eng.pdf [Accessed 24 May 2016]

¹⁶² UNECE, Country Profile on Housing and Land Management in Ukraine, 2013, p.2, available at: <http://www.unece.org/housing-and-land-management/housingareas-of-work/housingcountry-profiles/country-profile-studies/ukraine-2013.html> [Accessed 24 May 2016]

¹⁶³ Article 34 of the Housing Code of Ukraine, 30 June 1983 of No. 5464-X; NRC, Report ‘Housing, Land and Property Rights of Displaced and Conflict-Affected Communities in Eastern Ukraine’, Jan 2016, p.20

¹⁶⁴ UNECE, p.2.

Undoubtedly, internal displacement has intensified the need for housing even more, especially in areas hosting large numbers of IDPs.¹⁶⁵ Taking it into account, the UNECE recommends to amend the Housing Code of Ukraine to ensure long-term state policy on housing,¹⁶⁶ instead of the current one, which is based on a short- or mid-term perspectives.

Majority of IDPs in Ukraine are renting private accommodation (61.7 %) or hosted with family and friends (33%), while others live in hotels (on a self-pay basis), collective centres, dormitories, resorts and sanatoriums provided by the municipality (13.7 %).¹⁶⁷ The Shelter cluster's assessment in Eastern Ukraine¹⁶⁸ highlights that the majority of assessed IDPs live in accommodation either adequate (34.1%) or fair (24.6%), while 18.5% and 19.5% fall into the poor and inadequate categories and the remaining 3.3% belongs to the extremely vulnerable category of households whose shelters require urgent assistance.¹⁶⁹ It means that a lot of houses are overcrowded, are not suited for winter conditions, lacking adequate heating and insulation, access to hot or cold running water.¹⁷⁰ Such living conditions do not comply with the principle of habitability, which envisages that adequate housing provides sufficient space and protect inhabitants from cold¹⁷¹. Besides, the UNHCR underlines that living in collective centres can create dependency and weaken the ability of the self-reliance, which sets barriers to integration.¹⁷²

Moreover, over half of the IDPs are living in rented accommodation, which does not comply with the security of tenure as there are no official written tenancy agreements. For example, 87.4 % of IDPs renting across the Luhansk region have no lease agreements.¹⁷³ General Comment No. 4 underlines that notwithstanding the type of tenure (rental accommodation, cooperative housing, lease, emergency housing and informal settlements) all

¹⁶⁵ According to the Ministry of Social Policy as of August 2015 1.082.960 IDPs registered in Kharkiv, Donetsk, Luhansk, Zaporizhia and Dnipropetrovsk.

¹⁶⁶ UNECE, Country Profile on Housing and Land Management in Ukraine, 2013, p.2, available at: <http://www.unece.org/housing-and-land-management/housingareas-of-work/housingcountry-profiles/country-profile-studies/ukraine-2013.html>, [Accessed 24 May 2016]

¹⁶⁷ NRC, Report 'Housing, Land and Property Rights of Displaced and Conflict-Affected Communities in Eastern Ukraine', Jan 2016, p.41.

¹⁶⁸ The assessment provides information about the Shelter and NFI needs of IDP households in Kharkiv, Donetsk, Luhansk, Zaporizhia and Dnipropetrovsk.

¹⁶⁹ UNHCR, Report 'Shelter and NFI Needs Assessment Report – Ukraine', August 2015, p.4, available at: <http://reliefweb.int/report/ukraine/shelter-nfi-needs-assessment-august-2015> [Accessed 24 May 2016]

¹⁷⁰ NRC, Report 'Housing, Land and Property Rights of Displaced and Conflict-Affected Communities in Eastern Ukraine', Jan 2016, p.41.

¹⁷¹ UN CESCR, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, para.8 d.

¹⁷² UNHCR, Key messages on internal displacement, February 2016, available from: http://unhcr.org.ua/attachments/article/1231/2016_02_UNHCR%20KEY%20MESSAGES%20ON%20INTERNAL%20DISPLACEMENT%20IN%20UKRAINE.pdf [Accessed 26 May 2016]

¹⁷³ UNHCR, Report 'Shelter and NFI Needs Assessment Report – Ukraine', August 2015, p.6, available at: <http://reliefweb.int/report/ukraine/shelter-nfi-needs-assessment-august-2015> [Accessed 24 May 2016]

persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. Nevertheless, the majority of landlords prefer informal agreements due to the fear that formalisation will lead to the taxation of the rental income, fines for tax avoidance and quality checks.¹⁷⁴

Additionally, adequate housing should have facilities essential for health, security, comfort and nutrition, which provide sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.¹⁷⁵ Despite this, only 54% of IDPs in Kharkiv, Donetsk, Luhansk, Zaporizhia and Dnipropetrovsk region have sufficient access to hot running water and only 14.2% of IDPs are living in accommodation without any vectors (rodents or bugs)¹⁷⁶.

Noticeably, shelter conditions differ in urban and rural areas in Ukraine. IDPs residing in urban locations are more likely to live in a sufficiently insulated house (49.2%) and have sufficient access to running water (88.4%) compared to those in rural areas (44% and 78% respectively).¹⁷⁷ While a lot of IDPs report problems with insufficient access to insulation, hot running water, heating and electricity,¹⁷⁸ this is not uncommon for the wider population in Ukraine. According to the UNECE, one in three Ukrainians lives in substandard conditions, with several generations living in the same dwelling.¹⁷⁹

In accordance with the principle of affordability, personal or household financial costs associated with housing should be at such a level that the satisfaction of other basic needs are not threatened or compromised. Although, the rent is usually reasonable, for example in Luhansk region near 65% of IDPs who rent accommodation pay between 250 UAH (10 euros) and 1.000 UAH (41 euros) per month¹⁸⁰, it exceeds an IDP's monthly allowance putting IDPs in difficult financial situation. According to the Cabinet of Ministers resolution No 505 'On providing a monthly address assistance to internally displaced persons living costs, including housing and utilities', a monthly address assistance is established to IDPs for

¹⁷⁴ NRC, Report 'Housing, Land and Property Rights of Displaced and Conflict-Affected Communities in Eastern Ukraine', Jan 2016, p.36.

¹⁷⁵ UN CESCR, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, para. 7.

¹⁷⁶ UNHCR, Report 'Shelter and NFI Needs Assessment Report – Ukraine', August 2015, p. 21-25, available at: <http://reliefweb.int/report/ukraine/shelter-nfi-needs-assessment-august-2015>, accessed 24 May 2016.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ UNECE, Country Profile on Housing and Land Management in Ukraine, 2013, p.26, available at: <http://www.unece.org/housing-and-land-management/housingareas-of-work/housingcountry-profiles/country-profile-studies/ukraine-2013.html> [Accessed 24 May 2016]

¹⁸⁰ NRC, Report 'Housing, Land and Property Rights of Displaced and Conflict-Affected Communities in Eastern Ukraine', Jan 2016, p.36.

covering living costs, including housing and utilities constitutes 884 UAH (35 euros) per month for pensioners and children and 442 UAH (18 euros) per month for able-bodied adults of working age.¹⁸¹ Besides, without formal written agreements, IDPs are not protected against unreasonable rent levels or rent increases, which make them even more vulnerable.

Moreover, adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities, which applies to urban and rural areas. This criterion is also difficult to fulfil for IDPs in the Ukrainian context. In fact, for a lot of Ukrainians getting to and from the place of work can place disproportional financial burden on their budgets. Also, national housing law and policy should consider the special housing needs of disadvantaged groups, e.g. IDPs elderly, children, mentally ill, but this requirement meets a lot of obstacles of financial, legal and practical nature.

To assist in safeguarding the proper living conditions for IDPs in Ukraine, in 2015 the Comprehensive national program for support, social adaptation and reintegration of the citizens of Ukraine internally displaced from the temporarily occupied territory of Ukraine and anti-terrorist operation conducted areas to other regions of Ukraine for the period until 2017 and the Action Plan to organize implementation of the program were adopted. The latter envisages enforcement of the IDPs' right to housing using a number of measures, inter alia, creation of a registry of real estate (under construction, abandoned residential buildings, etc), development of patterns of their lease to IDPs on a preferential basis; establishment of local communities' development projects for building of permanent and social housing for IDPs; construction of housing facilities intended for social needs in urban areas, for lease to IDPs on preferable terms; construction of cottage villages composed of modular homes for IDPs; development and implementation of projects for specialized social settlement construction.¹⁸²

While being of core importance for IDPs, it does not comply with the Law of Ukraine 'On state target programs' as the Comprehensive national program and Plan of Actions do not indicate the volume and sources of financing that will be used for the implementation.¹⁸³ Furthermore, no clear expected results pertaining to housing are identified,

¹⁸¹ Cabinet of Ministers of Ukraine, Resolution, On providing monthly targeted financial support to internally displaced persons from the temporarily occupied territory of Ukraine and anti-terrorist operation area to cover livelihood, including housing and utilities, 1 October 2014, No 505.

¹⁸² Cabinet of Ministers of Ukraine, Resolution, On Approval of the Comprehensive National Programme for Support, Social Adaptation and Reintegration of Citizens of Ukraine Internally Displaced from the Temporarily Occupied Territory of Ukraine and Anti-Terrorist Operation Conduct Area to Other Regions of Ukraine for the period until 2017, 16 December 2015, No. 1094.

¹⁸³ Law of Ukraine, 'On State target programs', (*Про державні цільові програми*) 18.03.2004 № 1621-IV, A Article 9.

which makes it impossible to monitor and assess the outcomes. Hence, the implementation of the program directly depends on funding and clearly formulated objectives, indicators and results, for now it is not feasible.

In comparison with Ukraine, the continuation of conflict within Georgia since 1990s contained two waves of displacement (during the conflict in 1991-1992 and the war in August 2008) where different housing needs of ‘old’ and ‘new’ IDPs have created more complex housing problems. It is under the circumstances that a major part of the housing stock in Georgia required massive reconstruction or demolition.¹⁸⁴ As of 2010, 58 % of the people displaced in the early 1990s were living in private accommodations (either renting or living with relatives of friends) and the remaining 42 % lived in 1.600 collective centres, while most ‘new’ IDPs were resettled to the accommodations built or refurbished for them.¹⁸⁵ After the country visit in 2013, the Special Rapporteur on human rights of IDPs was concerned that most IDPs suffer from inadequate living conditions and pointed out an urgent need to improve the living conditions of ‘old’ IDPs who are still living in collective centers in deplorable condition.¹⁸⁶

In accordance with Article 13 of the Law of Georgia on IDPs, the Ministry of internally displaced persons from occupied territories, accommodation and refugees of Georgia together with other relevant state agencies shall provide adequate housing to those IDPs who have been left homeless during displacement. The Law specifies that adequate housing is an ‘accommodation transferred to IDPs into ownership or lawful possession where essential conditions for dignified life are ensured including access to safety, sanitary conditions and infrastructure’.¹⁸⁷ Furthermore, the government of Georgia adopted the State Strategy for IDPs, which aim to improve IDPs’ living conditions and the Action Plan for implementation of State Strategy, which strives to provide long term solutions to the accommodation needs of IDPs.¹⁸⁸

Action Plan divided the activities related to durable housing solution of IDPs into three stages. The first stage is the rehabilitation of collective centers (roofing the buildings,

¹⁸⁴ UNECE, Report, Georgia 2007, available from:

<http://www.unece.org/hlm/prgm/cph/countries/georgia/welcome.html> [Accessed 26 May 2016]

¹⁸⁵ NRC, Report ‘Georgia: Towards Durable Solutions for IDPs’, September 2010, p.1.

¹⁸⁶ Human Rights Council, Report of the Special Rapporteur on the human rights of internally displaced persons, 2014, A/HRC/26/33/Add.1, p.13-14.

¹⁸⁷ Law of Georgia on Internally Displaced Persons - Persecuted from the Occupied Territories of Georgia, 6 February 2014, No. 1982-II/2014, art. 4(m).

¹⁸⁸ Government of Georgia, Action Plan for the Implementation of the State Strategy on IDPs during 2009-2012, 11 May 2010, No 575; Government of Georgia, Action Plan for the Implementation of the State Strategy on IDPs during 2012-2014, 13th of June, 2012.

improving the sanitary conditions, ensuring water and gas supply) and the transfer of living units into the ownership of IDPs currently living in them for a symbolic price of one lari (Georgian currency).¹⁸⁹ The second stage encompasses improvement of the living conditions of those IDPs who live in collective centers but government cannot offer them these buildings (e.g building is not habitable for technical reasons) and IDPs living in the private accommodations and need durable housing solution.¹⁹⁰ For this purpose, identification and rehabilitation of the state owned and unused buildings and construction of the new houses in various regions of Georgia were planned.

Action Plan entails different categories of IDPs living in the private accommodation: IDPs who own private accommodation; IDPs who are hosted by relatives/non-relatives or renting their accommodation, who do not own house but have a plot of land under their ownership; IDPs who are hosted by relatives/non-relatives or renting accommodation and who do not own real estate. For the latter, the state aimed to either rehabilitate the accommodation and transfer ownership or allocate a land where an individual cottage can be constructed in accordance with Standards for rehabilitation, conversion or construction works for durable housing for IDPs.¹⁹¹ Finally, the last phase of the Action Plan covers IDPs who are refusing the housing alternatives offered by the government. Having analysed the Georgian experience, four durable housing solutions can be identified:

- rehabilitation and transfer of ownership on the flats in collective centers to IDPs;
- rehabilitation of idle buildings, allocation of IDPs into these buildings and transfer of ownership to IDPs;
- construction of new apartment blocks, allocation of IDPs into these buildings blocks, transfer the ownership to IDPs;
- accommodation of IDPs in individual houses (purchased or newly constructed) in rural areas.¹⁹²

By the end of 2013, more than 16.300 displaced families obtained private ownership of the collective centre space, which were renovated.¹⁹³ On the one hand, it has ensured security of

¹⁸⁹ Government of Georgia, Action Plan for the Implementation of the State Strategy on IDPs during 2012-2014, para 2.2.1.

¹⁹⁰ Government of Georgia, Decree No. 575, Action Plan for the Implementation of the State Strategy on IDPs during 2009-2012, 11 May 2010, pp.2-4.

¹⁹¹ Ibid.

¹⁹² Government of Georgia, Action Plan for the Implementation of the State Strategy on IDPs during 2012-2014, para 2.2.

¹⁹³ IDMC, Report 'Home sweet home: housing practices and tools that support durable solutions for urban IDPs', March 2015, p.34, available at: <http://www.internal-displacement.org/publications/2015/home-sweet-home-housing-practices-and-tools-that-support-durable-solutions-for-urban-idps>.

tenure, facilitated local integration, improved habitability and considered culturally appropriate. On the other hand, IDPs were not consulted about the development of the programme, the standard of renovation was not always satisfactory, some collective centres were not renovated at all and IDPs received ownership of accommodation that fall short of the adequate housing.¹⁹⁴ In spite of these drawbacks the program had positive impacts on IDPs' housing rights; however, in order to be replicated a number of factors need to be considered, in particular whether there are political will to facilitate local integration, well-developed land administration system and whether collective centres are available for renovating.¹⁹⁵

Social housing for the most vulnerable IDPs living in inadequate temporary shelter and private accommodation was common practice in Georgia in 2007-2012. It was the initiative of Swiss Agency for Development and Cooperation, which developed the social housing in supportive environments model as part of its humanitarian programme. In the scope of this program, IDPs were accommodated rent-free in the houses owned and maintained by the municipal authorities and receive support from municipal social workers and a 'foster family'.¹⁹⁶ This solution, however, did not allow the transfer of ownership and subsequently was considered culturally inappropriate in Georgia.

Acknowledging the fact that people displaced in 1990s and 2008 will not be able to return in the nearest future and focusing on durable housing solutions for both 'old' and 'new', IDPs have contributed to the improvement of the living condition. However, it still remains one of the main challenges to the achievement of the durable solutions for IDPs in Georgia.

While Georgian experience concerning durable housing solution can be useful to learn from, there are also several factors, which need to be specifically scrutinized in the context of Ukrainian internal displacement. Firstly, internal displacement in Ukraine occurred approximately at the same time from different regions – Eastern Ukraine and Crimea, whereas there were two waves of displacement in Georgia during 1990s and 2008. Thus, there is no significant differentiation of needs between Ukrainian IDPs, while the situation with 'old' and 'new' IDPs in Georgia is more complex. Secondly, as of December 31st, 2015, the total number of IDPs in Georgia due to conflict-related is 239.000, whereas it is much

¹⁹⁴ IDMC, Report 'Home sweet home: housing practices and tools that support durable solutions for urban IDPs', March 2015, p.32-34, available at: <http://www.internal-displacement.org/publications/2015/home-sweet-home-housing-practices-and-tools-that-support-durable-solutions-for-urban-idps>.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

higher in Ukraine – 1.679.000.¹⁹⁷ This makes it more difficult to address the problem even with substantial international assistance. Thirdly, whereas IDPs in Georgia are not expecting to be able to return in the near future,¹⁹⁸ IDPs from the Donetsk and Luhansk regions have intention and chance to return when the security situation will allow. Finally, only 13.7% of the most vulnerable IDPs live in the collective centers in Ukraine in comparison with more than 40% of ‘old’ IDPs in Georgia.

Continuation of displacement in Ukraine will deteriorate IDPs situation pertaining to housing taking into consideration that there are no long-term policy in the housing sphere, the majority of rental accommodation provided without official agreements; costs of accommodation deplete IDPs savings. Hence, the state should focus on the development of long-term strategy on housing in order to decrease the vulnerability of IDPs from Crimea and Eastern Ukraine.

5.3. The right to property restitution

Conflict-induced displacement usually is accompanied by the destruction and damage of property. As stated in the Rule 133 of the customary international humanitarian law, the property rights of IDPs must be respected during international and non-international armed conflicts. Moreover, the principle 21 of the Guiding Principles asserts that no one shall be arbitrarily deprived of property and possessions and that property left behind by IDPs should be protected against destruction, arbitrary and illegal appropriation, occupation or use as well as pillage; direct or indiscriminate attacks or other acts of violence; being used to shield military operations or objectives; being made the object of reprisal and being destroyed or appropriated as a form of collective punishment.

The right to property restitution¹⁹⁹, which is one of the essential elements of restorative justice²⁰⁰, is guaranteed in various international documents. The principle 2 of Pinheiro Principles states that:

¹⁹⁷IDMC, Global Report on Internal Displacement, 2016, p.102-103, available at: <http://www.internal-displacement.org/globalreport2016/> [Accessed 12 May 2016]

¹⁹⁸ NRC, IDMC, Report ‘Georgia: Towards Durable Solutions for IDPs’, September 2010.

¹⁹⁹ Restitution is confirmation of the legal rights of displaced persons to their property and restoration of their safe physical access to, and possession of, such property. Compensation is the confirmation of prior legal rights to property and the provision of money or goods having a reasonable relationship to their market value, or other forms of just reparation (see. Parliamentary Assembly, CoE Resolution 1708, Solving property issues of refugees and internally displaced persons, 2010)

²⁰⁰Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behavior. See. Center for Justice and Reconciliation, available at: <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/>

'All [...] displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal'.

The same was reaffirmed by the UN Committee on the Elimination of Racial Discrimination.²⁰¹ States have the duty and responsibility to assist returned and/or resettled IDPs to recover the property they left behind and only when such recovery is not possible, competent authorities shall provide appropriate compensation or another form of just reparation.²⁰²

Importantly, the right to restitution is not prejudiced by the actual return or resettlement of displaced persons. It is considered to be the preferred remedy for displacement over the right to full and effective compensation.²⁰³ Hence, compensation cannot be offered without attempts to secure restitution rights. Besides it should not be seen as an alternative to restitution and can only be used when restitution is not factually possible or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement or other agreement provide for a combination of restitution and compensation.²⁰⁴ When IDPs voluntarily decide to opt for the cash compensation, provided they have all necessary information, and state funds are insufficient to grant reasonable compensation, then the alternatives are possible, for example construction of affordable housing, which can accommodate returnees²⁰⁵.

Whereas international law safeguards the right to property restitution for IDPs, national legislation usually does not incorporate this provision or there is no legal procedure to implement it due to political and financial reasons.

Generally, Article 56 of the Constitution of Ukraine is relevant for potential future claims for the restitution of damaged, destroyed or lost properties during the conflict. It states that:

'Everyone has the right to compensation, at the expense of the State or bodies of local self-government, for material and moral damages inflicted by unlawful decisions, actions

²⁰¹ UN Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No. 22: Article 5 and refugees and displaced persons, 24 August 1996, available at: <http://www.refworld.org/docid/4a54bc340.html> [accessed 26 May 2016]

²⁰² Guiding Principles on Internal Displacement, 11 February 1998, E/CN.4/1998/53/Add.2.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ UNHCR, Handbook on Housing and Property Restitution for Refugees and Displaced Persons, Implementing the 'Pinheiro Principles', March 2007, p.49, available at: http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf [Accessed 23 May, 2016]

or omission of bodies of state power, bodies of local self-government, their officials and officers during the exercise of their authority’.

Under the circumstances of anti-terrorist operation in the Eastern Ukraine specialized legislation will apply. Article 19 of the Law of Ukraine ‘On the fight against terrorism’ states that compensation for damage caused to citizens by terrorist act is paid by the state budget of Ukraine in accordance with law [...]’²⁰⁶. Terrorist act determined as crime in the form of weapons, committing an explosion, arson or other actions envisage under Article 258 of the Criminal Code of Ukraine. And pursuant to the Article 1177 of the Civil Code of Ukraine

*‘property damage inflicted to the property of a physical person as a result of crime shall be indemnified by the state, unless the person that committed a crime is identified or in case he/she is insolvent’*²⁰⁷

Thus, it seems that IDPs have the right to compensation for property damaged or destroyed as the result of terrorist act in Eastern Ukraine. Unfortunately, there is no law adopted, which establishes the terms and conditions for such indemnification.²⁰⁸

Moreover, there is no provision in the Law of Ukraine ‘On ensuring of rights and freedoms of internally displaced persons’ in regards to this matter. As of today only draft law registered in the parliament attempts to address this gap and envisages that in case of damage to property left the place of habitual residence IDPs entitled to compensation for the value of such property (but not restitution) in accordance with the Constitution, laws of Ukraine and international treaties. However, it stipulated that the procedure of calculation and payment of compensation should be determined by the Cabinet of Ministers of Ukraine, which de facto means that the Law will not be implemented in practice due to the absence of legal procedure. Consequently, on practice Ukrainian legislation does not provide any compensation for damages inflicted during the anti-terrorist operation or annexation and does not safeguard the right to property restitution.

Contrarily to Ukrainian experience, the Law of Georgia ‘On internally displaced persons – persecuted from the occupied territories of Georgia’ recognizes the IDPs’ right to restitution on the real estate they left in the places of permanent residence. According to it, the state shall take all possible measures to protect the property owned and/or possessed by an IDP in

²⁰⁶ Law of Ukraine, ‘On the fight against terrorism’, 20.03.2003 № 638-IV

²⁰⁷ Civil Code of Ukraine, 16.01.2003 № 435-IV, art.1177.

²⁰⁸ Ukrainian Helsinki Human Rights Union, Instructions for the protection of the right to property and the right to respect for home violated during anti-terrorist operation in the European Court of Human Rights (*Інструкція щодо захисту в Європейському суді з прав людини права власності та права на повагу до житла, порушених під час подій в зоні АТО*), available at: http://precedent.in.ua/2016/04/07/instruktsiya-shhodo-zahystu-v-yevropejsk/#_1 [Accessed 28 May, 2016]

the places of permanent residence from robbery, destruction, arbitrary and unlawful use and appropriation and in case an IDP returns to the permanent residence after the conflict is over, the state shall take all possible measures to ensure that their property is returned to a lawful owner.²⁰⁹ Significantly, the right to restitution maintained in the cases when durable housing is provided to IDPs.

In 2007, the Law of Georgia ‘On property restitution and compensation for the victims of conflict in the former South Ossetian autonomous district in the territory of Georgia’ sets the legal procedures by which IDPs who fled South Ossetia can seek property restitution or compensation. It establishes a Commission on restitution and compensation, which aims to return of property; guarantee adequate (substitute) residence; compensation of property damage.²¹⁰ However, according to special report of Georgian Ombudsman this law has never been implemented and Commission was not created.²¹¹ To resolve this issue, the political will, as well as financial resources are required; yet, insufficiency stands in the way of achievement of durable solution for IDPs.

6. ACHIEVING DURABLE SOLUTIONS FOR INTERNALLY DISPLACED PERSONS. CASES OF CRIMEA AND EASTERN UKRAINE

Finding durable solutions is about restoring human rights of IDPs including their rights to security, property, housing, vote, education, health and livelihoods, which can entail different economical, political, legal measures. Procedural and institutional obstacles that practitioners can encounter during this process need to be put in the context of the countries that usually are affected by a complex of governance, human rights, and conflict-related challenges. This chapter aims to analyse possible ways to achieve durable solutions for IDPs in the Ukrainian context, specifically focusing on the right to vote, adequate housing and restitution of property. Realisation of these rights by IDPs without discrimination is among the factors that determine whether the durable solutions for IDPs are achieved. However, it is important to

²⁰⁹ Law of Georgia, ‘On Internally Displaced Persons - Persecuted from the Occupied Territories of Georgia’, 6 February 2014, No. 1982-IIIs 2014, art. 15.

²¹⁰ Law of Georgia, ‘On Property Restitution and Compensation for the Victims of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia’, 2007, art. 7.

²¹¹ Public Defender of Georgia, Special Report, Migration and Citizenship Issues facing Georgia’s Ossetian community, 2015, available at: <http://www.ombudsman.ge/en/reports/specialuri-angarishebi/migration-and-citizenship-issues-facing-georgias-ossetian-community.page> [Accessed 26 May 2016]

stress that there are no internationally recognized means of assessing, measuring or monitoring progress²¹² toward durable solutions.

6.1. The right to vote

Generally, an electoral framework addresses such issues as the type of electoral system; district delimitation and seat apportionment; voter registration and management of the voter lists; the legal status and codes of conduct for candidates and political parties; balloting procedures; counting and results reporting; and resolution and adjudication of disputes.²¹³ However, in the situation of internal displacement additional concerns can appear, for instance ensuring that IDPs have full and equal right to political participation and that this participation does not compromise the integrity of the electoral process or threaten the security of IDPs.²¹⁴

Universal and equal suffrage guarantees IDPs the right to vote at presidential, parliamentary and local elections at their current place of residence on par with other citizens. For safeguarding, the national electoral framework should provide responses to the displacement-specific needs of IDPs voters related to registration, residency requirements, lack of documentation; discrimination and election security.²¹⁵

Considering that residency requirements are often a prerequisite for the right to vote at local elections, they have to be analysed taking into account IDPs perspective. As was mentioned in the previous chapter, electoral law in Ukraine does not allow IDPs to participate in multiple-constituency parliamentary and local elections due to national regulations. In this case they need to register their current place of residence as a permanent one, which eventually leads to the deprivation of IDPs entitlements and threaten the link with the place of habitual residence. Further, re-registration can create practical problems in case IDPs want to travel to the temporally occupied territories to visit their relatives or collect property.

According to international standards, IDPs should choose their electoral district, as either their place of origin or to re-register in another part of the country where they are residing

²¹² Alexandra Bilak, Justin Ginnetti, Driving global efforts to reduce internal displacement: thoughts from Istanbul , 24 May 2016, available at: <http://www.internal-displacement.org/blog/2016/driving-global-efforts-to-reduce-internal-displacement-thoughts-from-istanbul> [Accessed 26 May 2016]

²¹³ OSCE, Guidelines for Reviewing a Legal Framework for Election, 2001

²¹⁴ Brookings-Bern Project on Internal Displacement, Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges, January 2010, p.524, available at: <http://www.refworld.org/docid/4b6c164e2.html> [Accessed 26 May 2016]

²¹⁵ Brookings-Bern Project on Internal Displacement, Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges, January 2010, p.524, available at: <http://www.refworld.org/docid/4b6c164e2.html> [Accessed 26 May 2016]

while displaced, without loss of assistance or other benefits.²¹⁶ Mistakenly, the absence of the possibility to vote at local elections is sometimes considered by internally displaced and government as safeguard for IDPs to return. In fact, as they have the right to resettle in another part of the country, their voting rights should not be linked to their eventual return. What is more, if IDPs decided to resettle after the return is possible, the right to vote in elections in their new permanent place of residence will be one of the essential components for achieving a durable solution.²¹⁷

Ensuring that electoral residency requirements have safeguards against the disenfranchisement of voters in the event of displacement is complex and multifaceted process, which entails number of steps:

- review the impact of national electoral legislation on IDPs and introduce amendments in order to ensure IDPs' ability to exercise their rights;
- establish an IDPs focal point within the national electoral management body;
- issue replacement of the documentation to IDPs without unreasonable conditions;
- provide absentee voting facilities when IDPs are unable, due to reasons such as safety or distance, to physically vote in their habitual place of residence;
- train electoral officials on the national legislative and procedural provisions in place to enable IDPs to exercise this right;
- educate voters on their rights.²¹⁸

Initially, to achieve durable solutions the legislation needs to be amended in order to guarantee the right to vote for IDPs at national and local elections. This means that legislation should allow for those who decided not to return to change their voting address in order to permanently vote in national and local elections at the place of current residence, without losing the IDPs status and without effect on the registration at the permanent place of residence. Under these circumstances, the integrity of the election can be protected by the safeguard that voting addresses cannot be changed again during certain periods of time.

Furthermore, it is reasonable to specify the residence period in the current place for allowing IDPs to vote at the local elections. In the long-term perspective, these models can be adjusted and when a peaceful settlement in Eastern Ukraine will be reached, the law should allow IDPs to choose whether to vote at his/her permanent or current constituency provided

²¹⁶ Brookings-Bern Project on Internal Displacement, Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges, January 2010, p.542-550, available at: <http://www.refworld.org/docid/4b6c164e2.html> [Accessed 26 May 2016]

²¹⁷ Ibid.

²¹⁸ Ibid.

that he/she was registered at the current place of residence, for example, no later than six months before the election²¹⁹. Whereas, IDPs that are planning to return should be able to vote at national elections by changing the voting place without changing the voting address. Again, this will allow IDPs to participate in the elections provided a peaceful settlement in parts of Donetsk, Luhansk and integration of Crimea back into Ukraine. For the proposed suggestions to be efficient, it is necessary to collect data, inter alia by means of electronic registration, on the current location of IDPs, their previous residences, and whether they intend to return to vote. However, from practical points of view, apart from the decisions made by internally displaced, it would be reasonable to assess feasibility of different scenarios in regards to the conflict as well, e.g. when and under what circumstances can the conflict be resolved or when Crimea can de facto become the part of Ukraine again. Facts-based assessment of the situation can facilitate achievement of durable solutions; however, the latter is hard to do as IDPs is very politically influenced topic.

Additionally, legal amendments should be supported by the establishment of institution such as, the IDPs focal point in order to review national electoral legislation and procedures, recommend necessary legislative reforms and procedural amendments; develop operational plans for registration of the displaced; ensure that IDPs have documentation to exercise their right to vote; produce voter information for IDPs; work with the election complaints and appeals mechanisms to ensure that IDPs are not discriminated against in their access to judicial remedies.²²⁰

The search for the measure to ensure the right to vote for IDPs becomes even more complex as the adoption of laws and their implementation influenced by political, social and economic factors in the country. To exemplify, in some parts of Donetsk and Luhansk regions IDPs constitute the majority of population²²¹, which will definitely impact the

²¹⁹ Election Law of Bosnia and Herzegovina, Article 20.8: ‘a citizen of BiH who is a displaced person and has the right to vote, shall have the right to register and to vote in person or absentee for the municipality in which the person had his or her permanent place of residence according to the last Census conducted by the State of BiH, except in the case where the person can provide proof of a change of his or her permanent residence in accordance with the law, in the period from the last Census conducted by the State of BiH until that person acquired status as a displaced person, or in person for the municipality of his or her current residence, under the condition that he or she became a resident of that municipality at least six (6) months prior to the election day’.

²²⁰ Brookings-Bern Project on Internal Displacement, Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges, January 2010, p.543, available at: <http://www.refworld.org/docid/4b6c164e2.html> [Accessed 26 May 2016]

²²¹ Social Communications Research Center, ‘Voting rights of internally displaced persons, opinions and expert assessments] (*Виборчі права внутрішньо переміщених осіб: думки та оцінки експертів*), available at: http://nbuviap.gov.ua/index.php?option=com_content&view=article&id=1578:viborchi-prava-vnutrishno-peremishchenikh-osib-dumki-ta-otsinki-ekspertiv&catid=8&Itemid=350 [Accessed 25 May, 2016]

outcome of the elections. Also, due to the poor social and economic conditions, IDPs can be easily manipulated by the candidates, which will jeopardize the integrity of elections.

6.2. The right to adequate housing

While adequate housing is one of the main displacement-related needs and precondition for achievement of durable solutions for IDPs, especially in the situations of protracted violence, it is one of the most complex issues to address. There are number of obstacles on the way to safeguard the right to housing: absence or limited capacity of institutional framework; failure to consult with IDPs in planning and policy making; uncoordinated agency planning; inappropriate design solutions etc.²²²

Nonetheless the demand in most cities in Ukraine have increased, housing rental options are limited due to a shortage in municipal housing stocks, no extension of rental market and suspension of social housing construction.²²³ It means that Ukrainian authorities have to address structural problems in order to facilitate the achievement of durable solutions for IDPs.

Generally, there are five procedural requirements that form the base for the state regulation of housing during displacement:

- establish standards for housing;
- ensure coordination;
- consolidate short-term housing solutions with the long-term housing strategy;
- location of the housing during displacement and active participation of IDPs in the reconstructing of their homes.²²⁴

In terms of institutional arrangements, it is beneficial to have multi-level centralized coordination of the government institutional capacity.²²⁵ The possible indicator of progress towards achieving durable solutions in regards to the right to housing can be the percentage

²²² Brookings-Bern Project on Internal Displacement, Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges, January 2010, pp.175-177, available at: <http://www.refworld.org/docid/4b6c164e2.html> [Accessed 26 May 2016].

²²³ UNECE, Country Profile on Housing and Land Management in Ukraine, 2013, p.7-8, available at: <http://www.unece.org/housing-and-land-management/housingareas-of-work/housingcountry-profiles/country-profile-studies/ukraine-2013.html> [Accessed 24 May 2016]

²²⁴ Brookings-Bern Project on Internal Displacement, Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges, January 2010, p.181-195, available at: <http://www.refworld.org/docid/4b6c164e2.html> [Accessed 26 May 2016].

²²⁵ Ibid.

of IDPs living in overcrowded housing, compared to the resident population or the situation before displacement.²²⁶

As well as, with the right to vote, procedural and institutional framework aiming to facilitate achievement of durable solution should be considered in political, economic, social realities of the country. Searching for the durable housing emphasis should be made on the development of the long-term housing strategy as the way to improve situation for IDPs from Crimea and Eastern Ukraine.

Firstly, housing strategy ought to integrate the needs of the wider socially vulnerable population with those of IDPs²²⁷ considering that the scarcity of housing and poor living condition affects IDPs on par with wider population. As a socially and politically sensitive topic, this approach can decrease tension in the hosting communities and promote local integration. Secondly, a multi-sectoral approach needs to be adopted in order to safeguard tenure security, affordability, habitability, cultural adequacy, access to employment and social services, livelihoods support etc. However, for being durable it requires significant investment from the state as well as international donors.

Taking into account that a lot of urban IDPs rent their accommodation, it is necessary to provide affordable housing for rent by such means as affordable credits, retrofitting of abandoned property, re-zoning land for residential use, provision subsidies for the upgrading of vacant housing stock.²²⁸ Another solution was proposed by the USAID Public Private Partnership Development Program, in the study that aims to integrate IDPs durable solutions in the wider scope of addressing Ukrainian housing problems. The model ‘Communal company with private investor provides social rental housing’ aims to provide affordable rental housing for low income households and IDPs. It is public-private partnership project, where private investors (construction companies) build accommodations and the communal companies provide housing management and maintenance services. The estimated rent for a small apartment of 35m² is approximately UAH 1.300 (51 euro) per month, which is a reasonable price even though it exceeds IDPs monthly allowance.

It is well-established that the right to adequate housing is subject to progressive realisation. Achieving durable solutions for IDPs in this sphere is complex and time-

²²⁶ Brookings-Bern Project on Internal Displacement, IASC Framework on Durable Solutions for IDPs, April 2010, p.33, available at: <http://www.refworld.org/docid/4c5149312.html>

²²⁷ NRC, Report ‘Housing, Land and Property Rights of Displaced and Conflict-Affected Communities in Eastern Ukraine’, Jan 2016, p. 19.

²²⁸ IDMC, Report ‘Home sweet home: housing practices and tools that support durable solutions for urban IDPs’, March 2015, p.65, available at: <http://www.internal-displacement.org/publications/2015/home-sweet-home-housing-practices-and-tools-that-support-durable-solutions-for-urban-idps>.

consuming process, which needs to target structural problems in Ukraine. In the long-term perspective, governments should recognise displacement as a development issue for both the displaced and host populations and focus on inclusive area-based housing initiatives, which are integrated into broader urban planning and growth strategies. This approach can lead to the institutionalisation of the practice, which will establish sustainable solutions for IDPs as well as the wider population.

6.3. The right to property restitution

Another factor, which indicates that the durable solutions are achieved, is when IDPs enjoy, without discrimination, access to effective mechanisms that restore their property²²⁹ or provide them with compensation. However, because there is no law on property restitution and generally shortage of financial resources implementation of the restitution programs is infeasible in nearest future. In addition, abandoned properties can be used by secondary occupants, claims procedures either do not exist or complex and legalistic, enforcement of the decisions is not financially feasible.

De facto authorities of ‘LPR’ and ‘DPR’ can enact ‘laws on abandonment’ that condition rights to the property on their active use or continual possession by the rights-holder.²³⁰ For example, Norwegian Refugee Council reports that in April 2015, authorities of self-proclaimed republics in Luhansk region announced that IDPs would need to register in person within 45 days after an announcement to prove their ownership or risk losing their homes.²³¹ Furthermore, the Freedom House emphasizes that after the annexation the property rights in Crimea ‘have been violated on massive scale’²³² and IDPs do not have access to the property they left on peninsula. Surely, the absence of effective remedies in the country increases vulnerability of IDPs.

State regulations needs to focus on number of issues during the internal displacement, such as prevention of distraction and arbitrary occupation of abandoned property; safeguarding registration documentation; establishment of a survey of property that is subject to restitution claims; inventory of condition and contents of abandoned property; regulation

²²⁹ In the scope of this chapter the term ‘property’ will cover right of ownership of housing in towns and villages along the contact line between the opposite forces and in the temporally occupied territories.

²³⁰ Brookings-Bern Project on Internal Displacement, Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges, January 2010, p.379, available at: <http://www.refworld.org/docid/4b6c164e2.html> [Accessed 26 May 2016].

²³¹ NRC, Report ‘Housing, Land and Property Rights of Displaced and Conflict-Affected Communities in Eastern Ukraine’, Jan 2016, p.32.

²³² Andrii Klymenko (2015), Human Rights Abuses in Russian-Occupied Crimea [pdf], available at: https://freedomhouse.org/sites/default/files/CrimeaReport_FINAL.pdf [Accessed 25 May 2016]

of temporary humanitarian re-allocation of abandoned property (e.g. the usage of abandoned property in public interest or by security forces).²³³ For instance, it is reported that residential houses and business were occupied to billet troops and to store weapons along the contact line between opposite forces in Eastern Ukraine;²³⁴ however, there is no provision in law, which address this issue.

Importantly, the right to property restitution for IDPs should be incorporated into the national legislation, which can be achieved by adoption of new laws regulating the process or amending existing one. What is more, implementation of the legislation needs to be safeguarded by the establishment of equitable, transparent and non-discriminatory institutions, procedures and mechanisms to assess property claims.²³⁵ Besides, there are number of other factors, which facilitate achievement of durable solutions: revocation of temporary allocation regimes as well as private property transactions in case of duress; establishment of procedures for receipt, processing, and adjudication of claims; determination of the geographic and temporal scope of provisional remedial programs and who is entitled to a claim, what evidence is required in support of claims.²³⁶ Finally, local and national authority should recognise and enforce the decisions of the restitution bodies.²³⁷

The Internal Displacement Monitoring Center emphasizes that remedies should be based on IDPs choice and the restitution process should be simple; the repair and reconstruction of damaged housing is a key element of any restitution claims process; compensation should be provided only in the limited cases determined by law; restitution claims should not be considered void due to the passage of time; restitution rights must extend to heirs of property; effective institutional coordination is needed to address property issues; and financial support for restitution process need to be secured.²³⁸

Thus, consistent legislative and administrative framework is required for IDPs to enjoy the right to property restitution, but as of today Ukraine is lacking political will, financial and

²³³ Brookings-Bern Project on Internal Displacement, *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, January 2010, p.388-392, available at: <http://www.refworld.org/docid/4b6c164e2.html>, [Accessed 26 May 2016]

²³⁴ NRC, Report 'Housing, Land and Property Rights of Displaced and Conflict-Affected Communities in Eastern Ukraine', Jan 2016, p.36.

²³⁵ IDMC, *The right of IDPs to return home and property Restitution* [pdf], p.3, available at: <http://idp-key-resources.org/documents/0000/d04392/000.pdf> [Accessed 25 May 2015]

²³⁶ Brookings-Bern Project on Internal Displacement, *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, January 2010, p.394-414, available at: <http://www.refworld.org/docid/4b6c164e2.html> [Accessed 26 May 2016]

²³⁷ IDMC, *The right of IDPs to return home and property Restitution*, p.4, available at: <http://idp-key-resources.org/documents/0000/d04392/000.pdf> [Accessed 25 May 2015]

²³⁸ Brookings-Bern Project on Internal Displacement, *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, January 2010, p.378, available at: <http://www.refworld.org/docid/4b6c164e2.html> [Accessed 26 May 2016]

institutional capacity to implement it. Meanwhile, the Ukrainian human rights organisations advises victims whose property was damaged or destroyed on the territory of anti-terroristic operation to apply to the European Court of Human Rights due to the fact that there is no right to effective remedy before the national authority.²³⁹

In order for taken measures to be efficient, it is necessary to make a background analysis of the general situation in the country, e.g. human rights, political situation, and social structure. As for solutions to be durable, they need to be culturally appropriate and relevant in the context of the country. For example, in some cases it is necessary to address structural problems as in regard to adequate housing for IDPs, and sometimes the amendments to the law will be required.

Also, it should be considered that IDPs are not a homogeneous group and their economic status and resource levels can vary, thus in the long-term perspective the provision of assistance based not on IDPs status but on needs must be ensured.

Finally, on the basis of this analysis, it is reasonable to say that protection of IDPs from the legal perspective in temporal and should be over when the durable solutions are achieved. However, due to number of political, social and economic factors IDPs can keep their status and entitlements for decades, develop dependency and become victims of political manipulations.

7. CONCLUSIONS AND RECOMMENDATIONS

This analysis has shown that internal displacement is not only persistent and complex political and development challenge but it is also a relatively new concept. It started evolving only in the beginning of 1990s due to increasing number of IDPs that states were either unable or unwilling to protect or assist to. With an introduction of the concept of sovereignty as a form of responsibility, a legitimate concern of the international community over internal affairs of other states was justified.

After years of research and lobbying in 1998, the Guiding Principles on Internal Displacement synthesized a number of applicable norms of international law into standards, which respond to the specific needs of IDPs, ensuring, for example, the right to be protected against forcible return to or resettlement, the right to know the fate and whereabouts of

²³⁹ UHHRU, Instructions for the protection of the right to property and the right to respect for home violated during anti-terrorist operation in the European Court of Human Rights (*Інструкція щодо захисту в Європейському суді з прав людини права власності та права на повагу до житла, порушених під час подій в зоні АТО*), available at: http://precedent.in.ua/2016/04/07/instruktsiya-shhodo-zahystu-v-eyevropejsk/#_1 [Accessed 28 May, 2016]

missing relatives. They contain a descriptive definition of IDPs, which helps to identify the population of concern, compile data, frame laws and policies to assist internally displaced. Even though Guiding Principles are not legally binding, they reflect international law therefore widely used as a basis for policies and laws on internal displacement.

It was concluded that protection of IDPs is temporal as displacement ends when IDPs have achieved durable solutions (return or resettlement). The latter is multifaceted and gradual process through which the need for specialized protection diminishes and IDPs achieve sustainable integration at the place of origin or elsewhere. It is emphasized that obstacles that can be encountered during this process need to be put in the context of the country that usually affected by a complex of governance, human rights, and conflict-related challenges.

After the Russian annexation of Crimea and conflict that broke out in the eastern part of the country, Ukraine has experienced large-scale displacement of 1.679.000 people, which constitutes more than 3 % of Ukraine's population. In spite of the efforts by the international community and Ukrainian government, the situation in Luhansk and Donetsk region remains unpredictable with death tolls increasing every day. Even though de jure Crimea still belongs to Ukraine its reintegration back is unlikely in the nearest future. Due to different circumstances of displacement (annexation and separatists' movements), the attitude towards IDPs from Crimea and Eastern Ukraine differs among wider population, even though their needs are similar. Furthermore, for achieving durable solutions for IDPs from Crimea and Eastern Ukraine the factual situation on the ground and feasibility of different scenarios for resolving of the conflicts need to be considered.

Ukraine ratified all international documents on which the Guiding Principles are based, which means that national legislation should be in compliance with international standards. In fact, the Law of Ukraine 'On ensuring of rights and freedoms of internally displaced persons' establishes guarantees of rights, freedoms and legitimate interests of IDPs, many of which correspond to the provisions of the Guiding Principles. Nevertheless, Ukrainian laws and practice have gaps and loopholes with regards to the protection of IDPs.

Chapters 5 and 6 of this present research are specifically focused on the rights to vote, adequate housing and property restitution, analysing international and national laws, underlining problems that IDPs from Crimea and Eastern Ukraine can encounter and discussing the ways to achieve durable solutions for IDPs in the context of these rights.

It was concluded that electoral residency requirements in Ukraine should have legal and institutional safeguards against the disenfranchisement of IDPs voters during local and multiple-constituency parliamentary elections. Taking it into account, it is essential to amend

the electoral law of Ukraine and allow IDPs to vote in all elections at their current place of residence, which should not affect the registration at the permanent place of residence, or lead to the loss of IDPs entitlement and all benefits it entails. Whether IDPs have the intent to integrate locally needs to be considered in combination with the factual situation and prospects for IDPs to return. Thus, in practice solution for IDPs from Crimea can be different from those for IDPs from Eastern Ukraine.

In order not to jeopardize the integrity of the electoral process the following provisions should be envisaged: voting address of the IDPs voters should be determined using IDPs certificate of registration; the change of IDPs voting address should not be automatic; the voting address cannot be changed again during certain period of time; IDPs should be able to vote in presidential and parliamentary (based on proportional principle) elections by changing voting place without changing voting address; the residence period in the current constituency should be specified for IDPs who want to vote at local elections.

It was summarized that the housing market in Ukraine can be characterized by the lack of adequate temporary and permanent accommodation, which affects IDPs as well as wider population. Hence, it is necessary to use an integrated approach with community-based interventions in order to ensure durable housing solution for internally displaced in Ukraine. The research recommends providing legal mechanisms and allocate necessary funding for the implementation of the relevant law and policies, in particular establish legal procedure for implementation of social rental housing for IDPs; indicate the volume and sources of funding of the Comprehensive national program for support, social adaptation and reintegration of the citizens of Ukraine, internally displaced from the temporarily occupied territory of Ukraine and anti-terrorist operation conduct area to other regions of Ukraine for the period until 2017 in the state budget; identify clear and feasible expected result for the enforcement of the IDPs' right to housing in the Action Plan to the program.

In regards to the shortage of permanent and temporal accommodations, the state can take the following measures: provide recontraction and transfer of ownership on the flats in collective centers to IDPs if they fulfil the requirements for an adequate housing according to the international human right standards; identify and rehabilitate unused municipal properties and utilize them as housing for IDPs; allocate the land for construction of new apartment blocks (permanent/social housing/lease/transfer of ownership); provide accommodation of IDPs in individual houses (purchased or newly constructed) in rural areas.

Furthermore, to ensure the security of tenure the usual practice of absence of formal written tenancy agreement needs to be address by granting incentives and subsidies for

landlords, who renting to IDPs. All in all, chronic housing problems in Ukraine require development of the long-term national housing policy, which will integrate durable solutions for internally displaced.

Present research highlighted that while the cases of looting and damages in the frontline communities, as well as occupation of property for military use are reported in Eastern Ukraine, there is no provision in the national law, which address this issue. It is recommended to adopt the law, which safeguards the right to property restitution for IDPs together with establishment of transparent institutions and effective mechanisms to assess property claims. On the one hand, the regulation for the temporary allocation regimes is needed to regulate the occupation and expropriation of the property by military forces. On the other hand, it is necessary to ensure that armed units are aware about their responsibility towards property rights of civilians, especially in the contact zone.

Consequently, as conflicts in Eastern Ukraine and the annexation of Crimea have the tendency to become protracted so does displacement, which will not allow IDPs to return home for years or decades. That is why, the Ukrainian government should develop laws and policies, which provide holistic solutions that, will not only address immediate humanitarian needs but reduce vulnerability, improve the resilience and self-reliance of IDPs in long-term perspective.

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