

**Translating Protection into Legislative Action: Normative Framework on
Internal Displacement in Ukraine and Georgia**

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**To my grandparents, Leonid and Elvira, who taught me how to dream big and aim high.
All my successes I owe to you.**

**To my friends, Natalie Reyes and Kenan Civil, whose support was guiding me through
challenging but rewarding times of career change.**

Muchas gracias. Çok teşekkür ederim.

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ABSTRACT

This study focuses on Ukrainian IDP's right to social security and right to equal treatment before the law. Drawing upon international legal norms on internal displacement and Georgian experience in this field, the research aims to identify applicable legislative initiatives to address these areas of concern. It examines compliance of the Ukrainian normative framework on internal displacement with the international legal norms envisaged in the UN Guiding Principles on Internal Displacement. Through legal analysis and interviews with Georgian experts it reveals how similar legal and policy gaps were addressed by Georgian law and policy makers. The research suggests that Georgian experience in ensuring durable solutions on internal displacement through legislative and policy reforms should be considered while designing laws and policies affecting Ukrainian IDPs.

List of Abbreviations

ID—internal displacement

IDPs—internally displaced persons

CoM—Cabinet of Ministers

NGCAs—non-government controlled areas

GCAs—government controlled areas

MoSP—Ministry of Social Policy

MTOT—Ministry of Temporarily Occupied Territories

TOT— Temporarily Occupied Territories

MRA— Ministry of Refugees and Accommodation

GEL—Georgian Lari

GoU—Government of Ukraine

1.0 Introduction

1.1 Internal Displacement as a Global Challenge in the Human Rights Context

Situations in which individuals or groups are forced to leave their homes and flee within the borders of their own countries are referred to as internal displacement (ID).¹ Despite similar challenges faced by internally displaced persons (IDPs) and refugees, both of which relocate for involuntary reasons, IDPs do not cross international borders and, therefore, do not enjoy the same protection regime as refugees. The magnitude of the ID problem has been constantly growing over the last decades, increasing on average by 1.6 million people a year from 2000-2014. Internally displaced people since 2001 accounted for 60 % of the total displaced caseload which outnumbers refugees.² While recent refugee crisis has given rise to legitimate international concern and become a high priority in the international agenda, the protection of the rights of IDPs often remains neglected by the international community. In light of serious human rights and security implications of the problem, the question of ID requires raising awareness both on a national and an international level.

Internal displacement has proven to be a security issue of paramount importance. In the framework of comprehensive approach to security, human dimension is one of the integral parameters to assess.³ Human mobility, especially that of an involuntary nature, presents many humanitarian and human rights challenges. First, forced displacement within a country is usually followed by humanitarian and human rights complications such as issues with livelihoods, food insecurity, denied access to health care and justice, absence of protection

¹ 'Guiding Principles On Internal Displacement Submitted By Francis Deng, Special Representative Of The Secretary-General To The UN Commission On Human Rights' (1998) 10 International Journal of Refugee Law.

² 'Protracted Displacement: Uncertain Paths To Self-Reliance In Exile' (*Internal-displacement.org*, 2016) <<http://www.internal-displacement.org/publications/2015/protracted-displacement-uncertain-paths-to-self-reliance-in-exile>> accessed 1 November 2016.

³ See further: OSCE comprehensive approach to security at <http://www.osce.org/who>

regime for vulnerable people who fled their homes.⁴ Second, unaddressed or poorly addressed internal displacement potentially may serve as a pushing factor for a cross-border migration. Hence, ID is a threat not only to national security, but may also undermine regional and global security on a much larger scale. The example of the situation in Syria confirms this assumption with the growing number of Syrian IDPs becoming Syrian refugees seeking asylum in Turkey and Europe.⁵ Therefore, internal displacement should be perceived as a matter of regional and international security.

While there are various factors triggering displacement, Internal Displacement Monitoring Centre (IDMC), a leading institution monitoring ID, distinguishes two main types: conflict-induced and disaster-induced internal displacement.⁶ While examining responses to ID in Ukraine and Georgia within the framework of this research, we will focus on the conflict-induced ID, i.e. the displacement caused by an armed conflict. As pointed out by scholars, there is a direct link between stability in the country and the level of ID. 60 % of displaced people originate from the countries assessed as “alert” and “high alert” on the Fund for Peace Fragile State Index.⁷ Hence, internal displacement and human security are directly connected to each other.

Given the complexity of the armed conflicts, civil unrests, and secessionist movements which serve as root causes for conflict-induced displacement, ID response is not a politically neutral matter. As Ukrainian and Georgian experiences show, conflict-induced displacement does not happen in a political vacuum, but on the contrary, it is often closely linked to the absence of political will to establish necessary protection programs. This argument and the

⁴ E. Mooney, 'The Concept Of Internal Displacement And The Case For Internally Displaced Persons As A Category Of Concern' (2005) 24 Refugee Survey Quarterly.

⁵ 'Syria: Forsaken Idps Adrift Inside A Fragmenting State' (*Internal-displacement.org*, 2016) <<http://www.internal-displacement.org/middle-east-and-north-africa/syria/2014/syria-forsaken-idps-adrift-inside-a-fragmenting-state>> accessed 6 September 2016.

⁶ 'Protracted Displacement: Uncertain Paths To Self-Reliance In Exile' (*Internal-displacement.org*, 2016) <<http://www.internal-displacement.org/publications/2015/protracted-displacement-uncertain-paths-to-self-reliance-in-exile>> accessed 1 November 2016.

⁷ Ibid

ideas on how to leave the politics aside when dealing with human rights concerns will be further elaborated in the following chapters. As IDMC reveals, “*the scope and severity of displacement situations is determined by political factors that include state fragility, weak governance, corruption, prioritizing economic interests over IDPs needs and rights, and the misuse of resources.*”⁸

One of the most problematic features of displacement is its “protractedness”. ID situations tend to continue for very long time and quick resolutions are very unlikely. As indicated by the IDMC, countries experiencing conflict-induced ID face displacement related problems over periods of 23 years on average.⁹ Understanding the protracted nature of the problem is very important to the design of policies and laws aimed to provide assistance to IDPs. The chapter 3 will provide more evidence to this argument.

Erin Mooney refers to IDPs as “a category of concern” in light of the multiple vulnerabilities they are exposed to.¹⁰ Being perceived as “outcasts in their own lands”, “exodus within borders”, “victims of war”¹¹, IDPs display particular proneness to endure human rights violations. Contrary to refugees, IDPs do not acquire a special legal status. Displaced “within one’s country of habitual residence,” unlike refugees, theoretically speaking, IDPs enjoy full protection of their own state and, therefore, are not in the position to claim a need for protection from another government. In practice, however, governments may neglect protection of the special needs of IDPs. As pointed out by Walter Kalin, “*the rights and guarantees to which IDPs are entitled stem from the fact that they are human beings and*

⁸ 'Protracted Displacement: Uncertain Paths To Self-Reliance In Exile' (*Internal-displacement.org*, 2016) <<http://www.internal-displacement.org/publications/2015/protracted-displacement-uncertain-paths-to-self-reliance-in-exile>> accessed 1 November 2016.

⁹ Ibid

¹⁰ E. Mooney, 'The Concept Of Internal Displacement And The Case For Internally Displaced Persons As A Category Of Concern' (2005) 24 Refugee Survey Quarterly.

¹¹ F. Bouchet-Saulnier, 'Using the Law of War to Protect the Displaced' (2000-2001) MSF Activity Report.

citizens or habitual residents of a particular state".¹² This means that IDPs do not acquire a special legal status enabling them to receive additional support. This legal obstacle significantly limits the scope of their protection in terms of the obligations of the international community to intervene. IDPs are often being left in so-called "legal limbo", when the government does not ensure their special protection and international community needs to be careful not to interfere in the matters of state sovereignty.

Internal displacement is linked to the loss of property and source of income of large groups within society which presents a threat to the realization of social and economic rights of IDPs. Furthermore, in addition to material insecurity, there is a significant psychological pressure caused by the unplanned and involuntary nature of displacement. This traumatic effect of ID, among other things, may result in escalation of violence, tensions between IDPs and local communities, incidents of gender-based violence, etc. Hence, ID creates a favourable climate for the escalation of human rights violations.

In addition, as research shows, groups of high social vulnerability (e.g. ethnic or religious minorities) are prone to forced displacement and abuses of human rights triggered by it.¹³ The case of the displaced Crimean Tatars, the national minority and indigenous population of Crimea, goes in line with this argument. The annexation of Crimea forced around 14,000¹⁴ Crimean Tatars to leave to the mainland of Ukraine in fear of the repetition of ethnic persecution by the Russian Federation. Besides, research reveals that during armed conflicts women are more likely to leave their homes with children and the elderly while men tend to stay to protect their homes. In the initial stages of the ID in Ukraine, women and

¹² W.Kälin 'Protection of Internally Displaced Persons in Situations of Natural Disasters: A Working Visit to Asia by the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons' (2005) Geneva: Office of the United Nations High Commissioner for Human Rights 2

¹³ E. Mooney, 'The Concept Of Internal Displacement And The Case For Internally Displaced Persons As A Category Of Concern' (2005) 24 Refugee Survey Quarterly 23

¹⁴ The figure is referred to by various IOs but is not exact as there is no indication of ethnicity in the ID certificate in Ukraine

children constituted around two-thirds of the entire displaced population.¹⁵ Displacement of vulnerable groups multiplies their vulnerability and requires special attention of the government and human rights agencies.

Due to its close link to human security and multi-sectional vulnerability of the affected groups, internal displacement proves to be the human rights issue of paramount importance. All concerns outlined earlier clearly demonstrate the pressing need to address ID in a comprehensive manner. The UN Special Rapporteur on ID calls upon governments to set a target to reduce new and protracted internal displacement by 50 percent by 2030. This should be achieved through tackling root causes, securing durable solutions, and prevention of new displacement.¹⁶

1.2 Justification of the research question

1.2.1 Significance of the study on the internal displacement in Ukraine with focus on problematic areas such as equality before law and right to social security

At least 1.7 million people have been forced to flee their homes in Ukraine over the past two years, the result of political chaos sparked by anti-government protests in 2014, Russia's annexation of Crimea, the self-proclamation of the Donetsk and Luhansk "People's Republics" and intense armed conflict in the east of the country.¹⁷ Those who fled to other regions, or *oblasts*, of Ukraine are referred to as *pereselentsi*, a Russian term for "relocated people" or "migrants" that is taken locally to mean "internally displaced people".

The number of people displaced has continued to grow despite the ceasefire envisaged under the February 2015 Minsk II agreement. As of September 2016, the Ministry of Social

¹⁵ 'Gender Equality - United Nations In Ukraine' (*Un.org.ua*, 2016) <<http://www.un.org.ua/en/resident-coordinator-system/gender-equality>> accessed 7 June 2016.

¹⁶ UNHRC 'Report of the Special Rapporteur on the human rights of internally displaced persons' (2016) UN doc A/HRC/32/35

¹⁷ 'Global Report On Internal Displacement' (*www.internal-displacement.org*, 2016) <<http://www.internal-displacement.org/assets/publications/2016/2016-global-report-internal-displacement-IDMC.pdf>> accessed 11 June 2016.

Policy (MoSP) put the number of registered IDPs in the country at 1,701,571.¹⁸ The true figure is likely to be higher, however, given that many people in areas not under government control (NGCAs) and along the contact line have been unable to register. This in turn has provided an incentive to cross the contact line, leading to additional displacement from NGCAs to areas under government control.

The main purpose of this thesis is to enhance knowledge about addressing such problematic areas of IDPs' concern in Ukraine as equality before law and right to social security. The study aims to do so by drawing upon international legal standards on internal displacement and good practices from the Georgian IDP Law and State Strategy on IDPs.

The choice of equality before law and right to social security as key problematic areas is justified by the vitality of these topics for the Ukrainian IDPs¹⁹ which I could identify working as an advocacy expert in the NGO "CrimeaSOS" providing legal and integrational support to the IDPs from Donbass and Crimea.

Ukrainian NGOs continue to receive an increasing number of inquiries from IDPs regarding impeded access to justice and services and discriminatory practices with regard to social assistance. Despite the fact that ID crisis remains an acute problem and the human rights situation is deteriorating, there is a tendency to lessen financial support of IDPs both on the side of the international community and Government of Ukraine. Local NGOs report decrease in funding of the IDPs' projects from the humanitarian agencies.²⁰ State budget allocations also show that each year IDPs targeted programs receive less and less funding for their implementation. This means that well-thought IDP legislative measures and policies are required to guarantee that the needs of Ukrainian IDPs are addressed. In the light of adoption

¹⁸ Ministry of Social Policy of Ukraine 'News' (*Mlsp.gov.ua*, 2016)
<http://www.mlsp.gov.ua/labour/control/uk/publish/article?jsessionid=337B14C4725B1D2EC5CFD7C88AD17E03.app1?art_id=194912&cat_id=107177> accessed 8 November 2016.

¹⁹ These two areas of concern were the topics of highest priority in the IDPs' enquiries received by the NGO "CrimeaSOS"

²⁰ Ibid

of IDP Law and recent creation of the Ministry specialized on the IDP issues, Ukraine more than ever needs to enhance its knowledge on how to address IDPs' needs through legislation and policy-making.

All aforementioned concerns justify the significance of this study aimed to produce recommendations on how to address identified challenges of the Ukrainian IDP laws and policies. It is a high time for human rights experts and policy-makers to work on strategies to improve protection of IDPs. Even though international organisations, such as OSCE Special Monitoring Mission in Ukraine and UN agencies, conduct thorough and systematic monitoring of human rights of IDPs and publish regular reports on existing protection gaps, in-depth analysis of the situation with concrete steps to take is missing. Recommendations presented in this study may serve as guidelines for law and policy-makers which explains not only scientific, but also practical relevance of this research.

1.2.2 Relevance of the Georgian experience on internal displacement for Ukraine

Lack of expertise in ID management in Ukraine urges to draw upon experiences of countries which faced similar problems. Exchange of experiences has proven to play an important role in designing domestic laws and policies on ID.²¹ As displacement peculiarities such as root cause, political and economic situation, need to be considered during law and policy making, the experience of the countries with the highest similarity are likely to be the most relevant. This assumption justifies the choice of Georgia for the purpose of this research.

First, due to the Soviet past, both countries share similar institutional architecture and legislative traditions which means similar acceptance or non-acceptance of various legislative and policy interventions. In addition, as members of the post-soviet bloc, both Ukraine and Georgia have limited resources and capacities for the required legal and policy changes. This view is not new in Ukrainian policy making. Since the Revolution of Dignity in 2014, which

²¹ *Protecting Internally Displaced Persons* (1st edn, Brookings Institution-University of Bern Project on Internal Displacement 2008).

significantly resembled the Rose Revolution in Georgia in 2003, copying Georgian reforms became a common trend for the new Government of Ukraine, with police reform and anti-corruption reform being the two most significant examples. Second, we must look at the root causes of displacement in both countries. Georgian experience in tackling ID stems from the challenges triggered by the protracted conflicts in Abkhazia and South Ossetia. Russian support of the South Ossetia separation strengthens resemblance of the conflict settings in Georgia and Ukraine. In both cases, the Russian Federation plays a role of a powerful neighbor that has a huge influence on the dynamics of conflict resolution. The complexity of the situation in both countries is amplified by the sensitivity of the question of non-recognition of de facto authorities by the state. The implications of this challenge on ID laws and policies will be revealed in the next chapters when looking into differences of the IDP protection regimes in the occupied and non-occupied territories. Remarkably, partially recognized Republic of South Ossetia is the only one entity recognizing self-proclaimed Donetsk People's Republic which demonstrates solidarity between two separatist movements.²²

Therefore, all the aforementioned arguments allow us to presume that ID legislative measures and policy options that worked in Georgia have potential to be successful in Ukraine.

1.3 Methodology, scope and limitations

Drawing upon the idea of interconnection between laws and policies and the necessity to ensure a comprehensive response to the internal displacement²³, the research is designed to cover analysis of both legislative measures and policy-oriented solutions.

²² 'South Ossetia Recognizes Independence Of Donetsk People's Republic' (TASS, 2016) <<http://tass.com/world/738110>> accessed 10 November 2016.

²³ Comprehensive response in this setting means holistic approach in which laws and policies are interconnected and both serve the function of the catalysts for social changes

In the legal dimension, the research method used is legal analysis. The study starts with the overview of the legislative developments in establishing an international, normative framework on internal displacement. The findings of this part of the research help to establish the importance of the compliance of the national legal framework with the international standards envisaged in the UN Guiding Principles on Internal Displacement. Then, Ukrainian IDP Law, relevant Cabinet of Ministers Resolutions and soft normative instruments on internal displacement in Ukraine are being reviewed. The major purpose of the review is to assess its compatibility with the international norms and identify the existing legal gaps within the problematic areas of the research focus. The analysis of the Ukrainian legislation aims to identify the shortcomings of the national law which needs to be addressed through legislative amendments. Therefore, the analysis of the Georgian legal framework on internal displacement, in its turn, focuses on the review of the provisions in Georgian law which directly address the legal gaps identified in the Ukrainian law. The ultimate goal of this comparative legal analysis is to produce recommendations for legislative amendments in Ukraine based on the Georgian experience. In order to incorporate the experts' knowledge on legal analysis of the IDP laws into my research, I conducted a study trip to the *Internal Displacement Monitoring Centre (IDMC)*, a leading institution in ID analytics in March 2016.

Three jurisdictions are covered within the framework of this research: international law (UN Guiding Principles on Internal Displacement), Ukrainian law (Ukrainian IDP Law and relevant Cabinet of Minister Resolutions) and Georgian law (Law on IDPs in Georgia and relevant decrees).

The policy dimension of the research examines the topic of applicable Georgian practices on ensuring durable solutions and effective coordination of the ID response. To identify these practices, two main research methods were used: analysis of the qualitative and quantitate data on internal displacement and experts' interviews in Georgia and Ukraine. As a

part of my field trip to Tbilisi in 2016, I interviewed five Georgian experts working in the field of accommodation of the IDPs' needs.²⁴ The key question posed to the interviewees was to share efficient legislative/policy solutions in Georgia that they think might be applicable to Ukraine with regard to the identified problematic areas.²⁵ After having the data collected during the interviews analysed, I shared my preliminary conclusions with the Ukrainian experts²⁶ to incorporate their views on the applicability of the recommendations voiced by Georgian experts.

There are few considerations to mention pertaining to the limitations of the study. First, the assumption that Georgian experiences are relevant for Ukraine may appear to be false due to the unpredictable nature of successes and failures of laws and policies. There is no 100 % guarantee that applying Georgian laws in Ukraine will solve all ID problems. In fact, this is a common critique voiced by the opponents of the “copying reform” principle.²⁷ This limitation should be addressed by emphasis on the need in contextualization of all the recommendations for the Ukrainian settings. Second, the research does not aim to present a general analysis of laws and policies on internal displacement in Georgia and Ukraine.²⁸ It only focuses on the particular areas of concern and, therefore, it analyses laws and policies on the selective basis with regard to their thematic relevance. The study by no means aims at the overall evaluation of national framework at the targeted countries. The main focus is to provide a constructive insight on what can be done better pertaining to the identified problematic areas.

²⁴ The list of interviewees is enclosed in the Appendix A

²⁵ For the full questionnaire please refer to the Appendix B

²⁶ Informal consultations with the legal experts from the NGO CrimeaSOS

²⁷ Main argument is that Georgian reforms will not be suitable to Ukraine as Ukraine is a significantly bigger state than Georgia (e.g. anti-corruption reforms is much easier to apply to a country with 4 mln population than 46 mln)

²⁸ This also reflects in the structure of the research: identification of the problems in Ukraine, analysis on how the issues were addressed in Georgia, and recommendations.

2.0 Emergence of the internal displacement discourse in the international agenda and key legal framework

2.1 UN Guiding Principles on Internal Displacement

2.1.1 Legislation-making process: argument in favor and against the universal displacement-specific instrument

Escalation of the global internal displacement crisis in 1990s and confusion in defining IDPs' legal status called upon the international community to address the existing protection gap. Thus, in 1992 the UNHRC took a lead in ensuring institutional and legal responses and created the mandate of the Representative to the UN Secretary General (RSG) on Internal Displacement.²⁹ This role was, consequently, transformed into the Special Rapporteur on Human Rights of Internally Displaced Persons (IDPs) with a mandate to strengthen international response to internal displacement and mainstream the human rights of IDPs into the UN system.³⁰

Dr. Francis Deng was appointed by Kofi Anna as the first mandate holder whose key task was to develop the necessary legal framework which would address the ambiguity of the legal status of IDPs and their rights in the context of the internal displacement.³¹ In its Analytical Report (1992), the Secretary-General on Internally Displaced Persons raised the issues of the lack of a clearly defined statement on IDP rights in international law and the urgent need to create a universal set of principles, i.e. *"guidelines which could be applied to all internally displaced persons regardless of the cause of their displacement, the country concerned, or the legal, social political or military situation prevailing therein"*.

Initially, the idea to introduce a new legal framework did not received a warm welcome. On one side, some international organisations, such as International Committee of

²⁹ Weiss T, *Internal Displacement : Conceptualization And Its Consequences* (2006) 55

³⁰ 'Human Rights Council Resolution A/HRC/RES/23/8 (June 2013)' (*Ap.ohchr.org*, 2013)
<http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/23/8> accessed 16 October 2016

³¹ Weiss T (n1) 57

the Red Cross (ICRC) and International Organization for Migration (IOM), opposed it arguing that the scope of their mandates already expands to the population displaced both internally and externally,³² and, therefore, there is no pressing need to duplicate mandates and existing normative instruments, such as Geneva Conventions and its 1977 Additional Protocols.³³ They also referred to the existing legal norms of international humanitarian and human rights law applicable to IDPs as another counter-argument rejecting the necessity of a unified body of principles for displaced populations. In addition, there has been a clear hostility from some states, such as Mexico, India, China, Sudan, and Cuba, which in their critique relied mainly on the argument of state sovereignty in the matters regarding assistance of the population displaced within the territory of the state.

Successful lobbying to convince the international community required a thorough analysis of the application of existing laws by IDPs to generate plausible arguments justifying the need to create a new normative framework designed to address IDP needs. Two studies have been conducted by prominent European and American legal experts, Manfred Nowak and Robert Goldman, which represented two different approaches to the existing gaps in international legislation: rights-based and needs-based. Walter Kalin has consolidated findings from both researches and prepared “Compilation and Analysis of Legal Norms” that was presented at the CHR’s session in 1996 and served as a basis for further advocacy for the necessity of the legal framework.³⁴

The argument of national sovereignty used by opponents of the international instrument was taken into account by legal experts preparing the suggested universal norms. These have been translated into the primary responsibility of the state doctrine, later enshrined in *Principles 3* and *25* stipulating that national authorities have the primary duty and

³² 'IOM Mandate' (*International Organization for Migration*, 2016) <<http://www.iom.int/mandate>> accessed 19 November 2016.

³³ Weiss T (n1) 56

³⁴ Weiss T (n1) 60

responsibility to provide protection and humanitarian assistance to IDPs.³⁵

Successful lobbying with the engagement of experts in human rights, humanitarian, and refugee law from various UN agencies, NGOs, and regional institutions such as Organisation of African Union, OSCE, and Inter-American Institute of Human Rights into the consultation process resulted in the creation of a document comprising of 30 principles shedding light on legislative lacunae IDPs around the world are facing. These 30 principles were presented to the UN Commission on Human Rights in 1998 and became a landmark in the history of legislative developments on internal displacement as the first universal guidance on ensuring human rights of IDPs.

The Principles are of declaratory character and have no binding force upon the states, which is the main critique against them. As rightly pointed out by Denis McNamara, an American politician and legislator, “principles have little value in dealing with lawless governments”, while conventions and treaties obviously have more law enforcement power. However, the Principles were formulated as such and not as a convention or a treaty for a number of reasons. Roberta Cohen, a former Senior Adviser to the Representative of the U.N. Secretary-General on Internally Displaced Persons, outlines the three key arguments in favour of this type of normative instrument: 1) governmental support was not enough for the development of a legally binding treaty; 2) treaty-making tends to be time-consuming while ID requires an urgent normative response; 3) existing binding legal instruments can be invoked to ensure the implementation of the Principles.³⁶

³⁵ 'Guiding Principles On Internal Displacement Submitted By Francis Deng, Special Representative Of The Secretary-General To The UN Commission On Human Rights' (1998) 10 International Journal of Refugee Law.

³⁶ Weiss T, *Internal Displacement : Conceptualization And Its Consequences* (2006) 70

2.1.2 Complementary role of the UN Guiding Principles with regard to international law

The thematic areas of the protection envisaged in the UN Guiding Principles address challenges faced by the IDPs related to infringement of life security and liberty (Principle 12) of freedom of movement (Principle 14), respect to family life (Principle 17), adequate standards of living (Article 18), right to education (Principle 23), access to justice (Principle 20), and access to humanitarian assistance (Principle 25, 26).

In these and other thematic areas touched by the ID Principles, key protection standards have already been regulated by the existing norms of international humanitarian law, such as Fourth Geneva Convention, Geneva Convention for Refugees 1951, and human rights law, such as ICCPR, ICESCR, and ECHR. In this regard, the UN Principles do not introduce new norms, but rather reinforce already existing standards and adopt them for the displacement settings, providing practical guidance on the interpretation of the human rights of IDPs. Full equality (Principle 1) and non-discrimination (Principle 4) principles also derive from the international human rights law and customary law.

This link between the UN Guiding Principles and international legal standards is crucially important to establish. The binding character of the legal instruments the Principles derive from, such as ICCPR, ICESCR, ECHR, and Geneva Conventions, allows to address the critique of non-binding character of the Principles and paves a way to establishing obligations of the states to comply with norms envisaged in the Principles. Furthermore, the drafters of the Principles had ambition to promote its dissemination among states and enhance advocacy initiatives to ensure that Principles, eventually, become customary international law.³⁷

³⁷ Weiss T (n1) 103

2.1.3 The added value of the ID Principles: universal prohibition of arbitrary displacement, right to personal identification, and right not to be forced to return or resettle

If the Principles derive from existing legal norms, the logical question of an added value arises from the complementary role of the instrument. Despite its repetitive character, the Principles, as a specialized document tackling displacement, constitute a breakthrough for establishing a universally applicable protection regime for IDPs.

Importantly, the Principles formalise the definition of an IDP. The Scope and Purpose section spells out that Principles apply both to state and non-state actors. This expands the internal displacement discourse and calls upon supranational dialogue between governments, intergovernmental and non-governmental organisations.

The structure of the Principles distinguishes norms required to protect populations from displacement (Principles 5-9), during displacement (Principles 10-23), and after displacement (Principles 28-30). This approach sets important standards for a comprehensive response to displacement and calls upon governments to introduce pre-emptive measures to avoid displacement (Principle 5) and develop long-term laws/policies for return and resettlement (Principle 28).

Not only do the Principles elaborate on existing norms of humanitarian and human rights law, but they also bring an added value by addressing challenges induced by the displacement which have not been explicitly addressed by human rights and/or humanitarian law. Bjorn Pettersson points out three remarkable legislative breakthroughs of the Principles: universal prohibition of arbitrary displacement, right to personal identification, and right not to be forced to return or resettle.³⁸

³⁸ Bjorn Pettersson, 'Complementarity between Key Instruments of International Law: UN Guiding Principles' (2002) <<http://www.internal-displacement.org/assets/publications/2002/2002-complementarity-of-hr-ihlgp-overview-en.pdf>> accessed 1 October 2016.

One of the biggest innovative provisions of the Principles as a human rights instrument, is an explicit prohibition of forced displacement envisaged in the Principle 5 that stipulates positive obligation of the state and non-state actors to “*avoid conditions that may lead to displacement*” and Principle 6 that guarantees “*the right to be protected against being arbitrarily displaced*”³⁹. Previously, among international human rights instruments, only the Convention of International Labour Organisation No 166 in Article 16 explicitly addressed this issue, yet in specific relation to indigenous populations. The UN Guiding Principles declare the prohibition of arbitrary displacement as being universally applicable to all human beings.⁴⁰

Furthermore, as an instrument based on a deep analysis of the needs of the IDPs, the Principles tackle technical issues and spell out process-oriented aspects of the assistance to IDPs. Acknowledging the link between registration and access to justice in the context of displacement, the Principles is the first normative document that regulates the process of the IDPs’ registration. Principle 20 instructs relevant authorities to “*issue IDPs the documents necessary for enjoyment and exercise of their legal rights,*” thus ensuring the right to personal identification documents.⁴¹

In itself, the right not to be forced to return or resettle is not new. It can be found in refugee law and is linked to *the non-refoulment* principle protected by the Geneva Refugee Convention 1951, ICCPR, ECHR, and CAT prohibiting forced return of the refugees to the countries where there is a risk for them to be subjected to degrading treatment or torture. As explained in the introductory chapter, the legal status of refugees is not the same with the legal status of IDPs, and consequently, refugee law does not directly apply to IDPs. Thus,

³⁹ 'Guiding Principles On Internal Displacement Submitted By Francis Deng, Special Representative Of The Secretary-General To The UN Commission On Human Rights' (1998) 10 International Journal of Refugee Law.

⁴⁰ Bjorn Pettersson, 'Complementarity between Key Instruments of International Law: UN Guiding Principles' (2002) <<http://www.internal-displacement.org/assets/publications/2002/2002-complementarity-of-hr-ihl-gp-overview-en.pdf>> accessed 1 October 2016.

⁴¹ Ibid

Principle 15 (d) which stipulates “the right of IDPs to be protected from being forcibly returned or resettled” is a significant step forward in the explicit prohibition of forced resettlement and return of IDPs.

2.2 Regional responses to internal displacement

2.2.1 Addressing regional specifics alongside the incorporation of international laws

Introduction of the international legal framework on ID triggered discourse on the necessity of legal instruments on a regional level. In mid-2000s, enthusiasm of regional organisations to address the institutional and normative gap in tackling displacement has been translated into commitments through various regional endeavours.

Africa

Africa, as the continent facing the biggest ID crisis with the number of IDPs reaching 12 mln. people (IDMC, 2014), responded with *the Protocol on the Protection and Assistance of Internally Displaced Persons (IDP Protocol)*, which was signed at the International Conference on the Great Lakes Region by 11 African member-states.⁴² The biggest achievement of the IDP Protocol is that the legal instrument obliges signatory parties to incorporate the UN Guiding Principles into domestic laws addressing ID. As envisaged by Article 6 of the Protocol, Member States are called upon to “*to adopt and implement the Guiding Principles as a regional framework for providing protection and assistance to internally displaced persons in the Great Lakes Region*” and most importantly, Member States shall “*enact national legislation to domesticate the Guiding Principles fully and to provide a legal framework for their implementation within national legal systems.*” Despite

⁴² The ICGLR member states: Angola, Burundi, Central African Republic (CAR), Democratic Republic of Congo (DRC), Kenya, Republic of Congo, Rwanda, South Sudan, Sudan, Uganda, Tanzania, Zambia. South Sudan has applied for membership of ICGLR on 08.09.2012 during the 3rd Extraordinary Summit of ICGLR Heads of State.

the paramount significance and legally binding character of the document, its narrow coverage targeting only the Great Lakes region (11 out of 54 African Union states) presents one of the key obstacles on the way to positive legislative changes in Africa at large. This fact, by no means, decreases the meaning of the Protocol for the targeted countries. In addition, the Protocol paved the way to the introduction of the first regional legally-binding instrument on ID, the Kampala Convention, the significance of which will be discussed furthermore in this chapter.

This commitment on the regional level to incorporate international norms into domestic laws stipulated by the Great Lakes Protocol sets an important precedent in terms of looking at the regional mechanisms as an important bridge between international law on ID and domestic laws necessary for the successful domestication of the international legal standards enshrined in the UN Guiding Principles.

America

In 2007, in similar fashion to the African case, the Organization of American States demonstrated commitment to enhance IDP protection via reinforcement of international principles through regional mechanisms in its General Assembly Resolution 2277. The resolution calls upon the Member States to “*consider using the Guiding Principles on Internal Displacement, prepared by the Special Representative of the United Nations Secretary-General on Internally Displaced Persons, as a basis for their plans, policies, and programs in support of such persons*” and urges Member States to “*consider adopting and implementing in their domestic law the Guiding Principles on Internal Displacement, which reflect certain aspects of international human rights law and international humanitarian law.*”

The non-binding character of the resolution, however, weakens the impact of this instrument on ID policy-making in the region. In this respect, the challenge of the status of soft law resembles this of the Principles and requires further advocacy to ensure the

implementation of the commitments declared.

Europe

On the European level, there have been numerous discussions in the Council of Europe about the necessity to enhance the regional protection of IDPs with the introduction of new legal instruments,⁴³ which formally has been stated in the Council of Europe Recommendation 6 (2006) stipulating that *“in order to address existing gaps in international law as far as the treatment of internally displaced persons is concerned, member states should consider the elaboration of additional international instruments.”*⁴⁴

The analysis of the recent World Humanitarian Summit (WHS) agendas also highlights the general tendency to prioritise the ID topic on the regional level and willingness of the regional stakeholders to consider the introduction of regional solutions with legal frameworks being an integral part. The consultations in the Middle Eastern Region, North Africa, Latin America, and the Pacific demonstrate willingness of the humanitarian actors to advocate for the development of regional and national frameworks on the protection of IDPs.⁴⁵

Analysing of the ongoing dialogue on the necessity of adoption of regional normative frameworks reflected in numerous soft law instruments such as guidelines, resolutions, and recommendations by various regional actors clearly shows the general trend to highly prioritise this matter. However, the intentions and commitments have yet to be translated into legally-binding legislative measures. As of today, only one regional instrument, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa

⁴³ Nadine Walicki, personal interview, 30 March 2016

⁴⁴ Council of Europe Committee of Ministers ‘Recommendation of the Committee of Ministers to member states on internally displaced persons’ (5 April 2016) Rec(2006)6 <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d8265> accessed 1 September 2016.

⁴⁵ IDMC ‘From Kampala to Istanbul: Advancing Global Accountability for IDPs through law and policy-making’ (*Internal-displacement.org*, 2016) <<http://www.internal-displacement.org/assets/publications/2016/20160519-whs-briefing-paper.pdf>> accessed 1 August 2016.

(hereafter: the Kampala Convention), legally binds the member governments to domesticate the UN Principles into national laws. Its role as an inspiration for introduction of other regional instruments is an important question to elaborate on.

2.2.2 Kampala as a landmark model for a regional framework for IDPs' protection

The Kampala Convention, which came in force in 2012, represents a good precedent for the regional treaty legally binding the signatory parties to guarantee full-fledged protection of the IDPs in compliance with international law. The added value of the convention is that not only does it enhance incorporation of the international norms into the domestic laws in displacement, but it also takes a significant step forward in addressing regional specifics of displacement, including special needs of the population of concern and root causes of the displacement.

The normative basis stipulated by the Kampala Convention accumulates an in-depth analysis of the IDPs' needs in Africa and represents a well-tailored instrument designed to address the regional challenges. Hence, dwelling upon the African cultural values, the treaty reflects the community-centred approach and ensures special provisions that consider land dependency as a particular feature of the displaced communities in Africa.

Calling for promotion of needs and vulnerabilities of the IDPs in general, Article 4 (5) of the Kampala Convention particularly urges states to *“endeavour to protect communities with special attachment to, and dependency, on land due to their particular culture and spiritual values from being displaced from such land.”*

The Convention's progressive and comprehensive approach can be also traced in its Preamble expressing determination to eradicate the root causes of the internal displacement. In the African context, it means that the Convention expands the scope of protection to the communities affected by the disaster-induced and development-induced displacement, which is a common phenomenon for the African continent.

The commitment to address the development-induced ID further enshrined in Article 10 of the treaty calling the states to «*prevent displacement caused by projects carried out by public or private actors*» is another distinctive feature of the Kampala Convention addressing the legal gap not previously addressed by the UN Guiding Principles.

In addition to regional specifics, the Kampala Convention also urges states to develop a law enforcement mechanism in order to ensure the implication of the rights guaranteed by the treaty. This is a paramount achievement as it tackles one of the key obstacles on the way to full-fledged protection of IDPs globally, which will be discussed in the next chapter,—low level of law implementation triggered by the absent or weak law enforcement mechanisms.

The Convention emphasizes the importance of the efficient monitoring system. In Article 9 (2 m), State Members are called upon to “*put in place measures for monitoring and evaluating the effectiveness and impact of the humanitarian assistance delivered to IDPs*. For this purpose, Sphere Standards, i.e. standards for monitoring and evaluating the delivery of humanitarian aid, have been envisaged in the Convention.

Article 14 devoted to the Monitoring Compliance establishes a clearly defined procedure to review the implementation of the Convention objectives through a specially designated body, *Conference of States Parties to the Convention*. The African Union, and African Peer Review Mechanism in particular, plays a vital role in the facilitation of the implementation monitoring. As stipulated by Article 14 (4), the member states, are obliged to “*when presenting their reports under Article 62 of the African Charter on Human and Peoples’ Rights as well as, where applicable, under the African Peer Review Mechanism indicate the legislative and other measures that have been taken to give effect to this Convention*”.

This mechanism, however, has yet to prove its efficiency. As of today, the Conference

of State Parties has not been convened.⁴⁶ Therefore, further advocacy is required to put in force the monitoring mechanisms envisaged by the treaty.

Despite undeniable positive impact of the Convention on the legislative developments in Africa, with 40 of the African Union's 54 member states having the convention signed and 25 having it ratified⁴⁷, the obstacles on the road to its implementation remain. As experts point out, the key challenges are as follows:

- ✓ low ratification rates at large, as well as a systematic decrease in ratification from year to year attributed to a so-called loss of momentum of the treaty;
- ✓ incomplete domestication among countries that ratified it (none of 25 signatory parties have finalised the process of the incorporation of the Convention into their national laws);
- ✓ aforementioned lack of monitoring enforcement.⁴⁸

The comparative analysis of the situation on the protection of IDPs in a specific African state-signatory to the Convention, before and after its ratification with an aim to evaluate the impact of the regional instrument, would be a very interesting topic for future research. However, the data for the analysis remains limited for the possibility to conduct an in-depth study on this matter: the prevailing majority of the countries facing the biggest ID crisis, such as Democratic Republic of the Congo, Sudan, and South Sudan⁴⁹, have not yet ratified the Convention, whereas in other signatory parties, such as Uganda, for example, the displacement had reached its peak prior to the ratification and the Convention might have had an impact only on the post-resettlement-phase. Despite existing shortcomings, the Kampala Convention may be used as an inspiration for other regions, including the region under

⁴⁶ IDMC 'From Kampala to Istanbul: Advancing Global Accountability for IDPs through law and policy-making' (*Internal-displacement.org*, 2016) < <http://www.internal-displacement.org/assets/publications/2016/20160519-whs-briefing-paper.pdf> > accessed 1 August 2016.

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Ibid

concern of this research (Europe), as a model of a mechanism enhancing IDPs protection on a regional level.

2.3 Shift of the responsibility to the national domain

Drawing upon the concept of sovereignty as a responsibility and reinforcing compliance of the domestic laws with international norms through regional mechanisms, there is a developing tendency towards a shift of responsibility of the IDPs protection to the national domain.⁵⁰

The main strength of the national instrument is that it has more potential, in comparison to international and regional mechanisms, to address specific challenges on the ground. Developed by national experts, national instruments are context-specific which makes them more practical and adjusted to the needs of the local population and peculiarities of the displacement. In addition, national instruments can (and highly advised) be developed in full consultation with IDP communities to reflect IDPs' aspirations and ensure their participation in decision-making.⁵¹

Despite evident strengths of national instruments, they also have their shortcomings and limitations. The first and the biggest one being the political will as the prerequisite for law-making. In case of a conflict-induced displacement triggering a creation of conflict zone under non-governmental control (Ukrainian and Georgian context), there is a tendency to postpone the enactment of IDP law or development of the law with limited protection regime due to the prevailing political view on IDPs as a temporary phenomenon requiring not legal but purely political solution, meaning preservation of territorial integrity [of the state] which

⁵⁰ J. Wyndham 'A Developing Trend: Laws and Policies on Internal Displacement' (2006) Brookings institution

⁵¹ Walter Kälin, *Addressing Internal Displacement: A Framework for National Responsibility* (The Brookings Institution - University of Bern Project on Internal Displacement 2005) 14

will automatically lead to the IDPs' return.⁵² This perspective may result in the unwillingness of the government to provide a comprehensive legislative response to ID and potentially may lead to a protracted and unaddressed humanitarian and human rights crisis. For the same reason, national instruments keep their main focus on “during the displacement” phase, while provisions on post-displacement/ return phase are often missing.⁵³

Another drawback of national instruments is that they are generally developed as a responsive measure after the outbreak of displacement aimed to solve problems as they occur. This explains the lack of pro-active vision and absence of provisions addressing all phases of the displacement cycle.

The evolution of the ID law in Georgia enacted in 1996 and amended in 2014 shows that the ID laws tend to improve with the second waves of IDPs.⁵⁴ While experience is the best teacher, international norms envisaged in the UN Guiding Principles incorporating international best practices can and should, serve as a substitution to experience for the countries which face internal displacement for the first time. This draws us to the conclusion that even though national instruments have the highest responsibility in addressing ID, they cannot exist in a vacuum and need international and regional mechanisms as an important supplement to enhance full-fledged and forward-looking protection of IDPs.

While incorporation of the international legal standards and UN Guiding Principles in particular becomes a common feature of the national instruments on ID, the analysis shows that not all norms are completely incorporated and further work is required to ensure full compliance with the UN Guiding Principles. For instance, only 8 out of 27 countries with IDP laws and policies in place have adopted anti-discriminatory clauses in their legislative

⁵² Personal interview with Georgian IDP experts, March 2016

⁵³ IDP Law And Policy' (*Internal-displacement.org*, 2016) <<http://www.internal-displacement.org/law-and-policy>> accessed 26 October 2016.

⁵⁴ See Chapter II for further arguments on this statement

measures,⁵⁵ yet non-discrimination proves to be the key principle for ID protection envisaged in the UN Principles. A limited number of states have ensured in its legal provisions establishing monitoring mechanisms (8), mechanisms for systematic data collection (7), and budgetary coverage of internal responses (11).

National Dilemma: Law, Policy, or Both?

As the research shows, there are various options to tackle ID on a national level, such as development of displacement specific instruments (laws, decrees, protocols, strategies, action plans) and sectoral regulation aiming at the inclusion of displacement-specific regulations into correspondent sectoral instruments.⁵⁶

A mapping tool on the laws and policies on ID developed by IDMC clearly indicates the global trend in the increase of national displacement-specific instruments upholding rights of IDPs. The overall number of countries that have enacted a national instrument on ID reached 27 and countries in the process or planning to do so –13.⁵⁷

The choice of the form of an instrument varies from country to country with the biggest dilemma continuing to be: can law be regarded as the most comprehensive response or should law be replaced and/or supplemented by relevant state policy and action plans? Depending on the legislative traditions and strategic choice, there are countries which only adopt laws and decrees to facilitate the implementation of the law but lack unified state policy (e.g. Ukraine where state program is of pure declarative character), countries which enact only policies (e.g. Uganda), and countries which adopt laws with consequent development of the state policy and/or action plan to ensure an enhanced protection regime of IDPs (e.g. Georgia).

⁵⁵ 'IDP Law And Policy' (*Internal-displacement.org*, 2016) <<http://www.internal-displacement.org/law-and-policy>> accessed 26 October 2016.

⁵⁶ *National Instruments on Internal Displacement: A Guide to their Development* (Brookings-LSE Project on Internal Displacement 2013)

⁵⁷ 'IDP Law And Policy' (*Internal-displacement.org*, 2016) <<http://www.internal-displacement.org/law-and-policy>> accessed 26 October 2016.

A national policy or plan of action proved to serve as an effective measure to the enactment of the national legislation. From a practical perspective, policies are important because they spell out national and local institutional responsibilities, and identify mechanisms of coordination of relevant government departments.⁵⁸ Like decrees/protocols/resolutions, policies are tasked to regulate the law implementation. However, policies have less technical and more visionary approach. It is important in terms of tackling the issues of various emerging IDP problems which need to be addressed promptly and without time-consuming additional law-making. Furthermore, on a political level, policies are vital as they demonstrate that the strategic response to ID is of national priority.⁵⁹

The assumption of this research based on the comparative analysis of the IDP protection programs in Ukraine and Georgia is that law supplemented by policy (Georgian example) appears to be a more comprehensive model in achieving durable solutions for IDPs than laws in a vacuum supplemented by the Cabinet of Minister Resolutions (Ukrainian case). The advantages of policy development for the sake of the efficient translation of law into practice will be elaborated on in Chapter III.

Conclusion

This chapter shows that international and regional legal framework is paramount in enhancing IDP's protection. International mechanisms are crucial because they delineate rights in a general sense and provide the groundwork. Regional mechanisms are the first important step in binding nations toward commitment of international principles. On top of that, as demonstrated by the Kampala Convention example, the regional mechanism provides greater specialization in regards to historical experiences or common issues. The analysis shows that even though the highest responsibility to protect IDPs lies on states, through established

⁵⁸ Walter Kälin, *Addressing Internal Displacement: A Framework for National Responsibility* (The Brookings Institution - University of Bern Project on Internal Displacement 2005).

⁵⁹ Walter Kälin, *Addressing Internal Displacement: A Framework for National Responsibility* (The Brookings Institution - University of Bern Project on Internal Displacement 2005).

commitments international and regional mechanisms play an important role in improving protection standards of the national mechanisms. Thus, they help to secure full-fledged and future-oriented protection of the IDPs' rights in situations when states are not able or not willing to do so.

3.0 Comparing IDP protection programs in Ukraine and Georgia

3.1 Analysis of the Ukrainian normative framework on ID with the focus on the key problematic areas: equality before law and right to social security

3.1.1 Legislative developments to protect the IDPs' rights

Faced with a growing displacement crisis, the Ukrainian government developed a law on IDPs' rights and freedoms with support from the protection cluster led by the UN Refugee Agency (UNHCR). The legislation was enacted in October 2014.⁶⁰ It upholds core international standards reflected in the Guiding Principles on Internal Displacement and addresses key protection concerns by incorporating an anti-discrimination provision, a guarantee of assistance for voluntary returns, access to social and economic services including residence registration, employment and healthcare.

A number of gaps in the text became apparent after its adoption, but thanks to the advocacy efforts of civil society and international organisations, IDPs' protection has been improved significantly and legal gaps have been addressed via a number of amendments to the 2014 law and resolutions from the Cabinet of Ministers (CoM).

The challenges IDPs faced in obtaining documentation were an issue of concern from the outset. Access to documentation is of paramount importance, because those without it are unable to exercise a wide range of their human rights. Only IDPs who hold a certificate confirming their registration as such are eligible for the state benefits offered to displaced

⁶⁰ Government of Ukraine, "Law on ensuring of rights and freedoms of internally displaced persons" (2014), <<http://goo.gl/a9Gca6>> accessed 2 July 2016

people, but as stated in Cabinet of Ministers Resolution 509 - which was adopted to facilitate implementation of the 2014 law – registration is only possible in the areas under government control. It requires applicants to be physically present and to hold valid identification documents.

The acute necessity to ensure implementation of the IDPs' right to social security envisaged in the UN Guiding Principles and Ukrainian IDP Law has been addressed in the Cabinet of Ministers Resolution 637 and 505 regulating social payments and targeted financial support of IDPs. The application of the CoM Resolutions regulating registration and payments showed their practical shortcomings and pointed out the pressing need in adoption of several further amendments to guarantee an inclusive approach to registration and social assistance. Hence, establishing less rigorous proof of residence, unlimited validity of the IDP certificate, and cancellation of SMS stamps confirming the place of residence have been guaranteed by the adoption of the CoM Resolution 352, while CoM Resolution 365 enabled payments on the basis of registration at the place of habitual residence and enhanced the responsibilities of the local authorities in tackling IDPs' problems.

Despite a significant progress in addressing legal gaps as they emerge, some positive legislative initiatives have been hindered by failure to enact the implementing regulations within an established deadline, while others are not being implemented in practice due to lack of procedural instructions.⁶¹

On the one hand, the adoption of numerous legislative measures specifying the application of the IDP Law demonstrates political will of the government to address the pressing needs of IDPs and priority of the IDPs' protection in the agenda as such. On the other hand, a proliferation of by-laws may signify shortsightedness of the provisions they aim to amend as well as the necessity to ensure clear accompanying instructions to avoid

⁶¹ UNHCR, 'Key Protection Concerns and UNHCR Recommendations' (2016)

confusion stemming from rapidly changing regulations.

3.1.2 Equality before the law: broadening the scope of protection

On 24 December 2015, parliament adopted an amendment to the 2014 law that expanded the definition of an IDP to include displaced foreigners and stateless people⁶². The Cabinet of Ministers also simplified registration procedures for children with no parents or legal guardians. Local governments are now authorised to register unaccompanied children in an effort to ensure that they are quickly assigned guardians. Resolution of Cabinet of Ministers 1014, which amended resolution 505, improved their protection by enabling distant relatives and temporary guardians to apply for financial assistance on their behalf. In addition, the Law 936-VIII (2254) “*On amendments to some Laws of Ukraine on enhancement of social protection of children and assistance to families with children*” which came into effect on 21 February 2016, enabled IDP minors aged 14-17 to apply for registration independently.⁶³

These provisions are particularly important, given that the conflict has affected around 580,000 children in Donetsk and Luhansk regions, of whom 14,500 of whom were already deprived of parental care before the fighting broke out.⁶⁴ Unaccompanied children also continue to cross the contact line.⁶⁶ In April 2016, 21 displaced orphans without valid certificates confirming their registration as IDPs were identified in Odessa *oblast*.⁶⁷

The CoM Resolution 352 adopted on 8 June 2016 has proven to be a significant step forward in terms of broadening the scope of IDPs’ protection. It clarified the procedure of the

⁶² Government of Ukraine, ‘Law No. 921-VIII (2166) On Amendments to Some Laws of Ukraine to Strengthen the Guarantees of Rights and Freedoms of Internally Displaced Persons’ (24 December 2015) <<http://goo.gl/gKYUB1>> accessed 2 July 2016

⁶³ UNHCR, ‘Key Protection Concerns and UNHCR Recommendations’ (September 2016)

⁶⁴ UNICEF, ‘Humanitarian Action for Children’, (13 January 2016), <<http://goo.gl/PLN2Zp>> accessed 2 July 2016

⁶⁵ UNICEF, ‘Ukraine Humanitarian Situation Report no. 37’, (1 September 2015), <<http://goo.gl/ZGTldF>> accessed 2 July 2016

⁶⁶ Protection cluster Ukraine, (April 2016 update) <<http://goo.gl/iLHVYs>> accessed 2 July 2016

⁶⁷ Ibid

application for the IDP certificate by caretakers for internally displaced orphans or minors without parental care. Another milestone of the Resolution is that it has confirmed the right of the IDPs registered in the NGCAs who had served or are currently serving sentence in the places of detention to be eligible for the application of the IDP certificate.

The new form of the IDP certificate with unlimited validity stipulated by the CoM Resolution 352 has addressed the need to amend the provisions of 509 stipulating rigorous proof of registration which had been heavily criticized by the civil society and international organisations. The acceptance of less formal evidence for registration, which includes various types of documents, photos, and videos, has significantly broadened the scope of protection by ensuring access to rights of those who lack formal registration.

3.1.2.1 Overly strict registration requirements: necessity to cross the contact line to register

Despite the positive legislative developments mentioned above, IDPs living in NGCAs still have to cross the contact line to register and claim the social benefits that registration brings, as stipulated in Cabinet of Ministers Resolutions 637 and 595. This setup may encourage further waves of displacement from rather than within NGCAs.⁶⁸ It also compels IDPs to move to certain areas, regardless of the risks inherent in making the journey, or those that they may or may not face in NGCAs.

As such, Cabinet of Ministers resolutions 637 and 595 are not compliant with the Guiding Principle 14, which guarantees IDPs' freedom of movement and choice of residence. They also violate Guiding Principle Four, which prohibits discrimination against them based on their "legal status, property, birth or any other similar criteria" and non-discriminatory provision of the Article 24 of the IDP Law in Ukraine. Ukraine's Court of Cassation has also ruled resolution 595 discriminatory and therefore illegal in its provision to stop paying social benefits to NGCA residents. The government, however, is still to act on the court's ruling and

⁶⁸ *Ibid*

payments remain suspended.

3.1.2.2 Obstacles in civil registration for the IDPs residing in NGCAs: court procedures for establishment of facts of birth/death

The inability of IDPs residing in NGCAs to apply for civil documentation has been a major concern for local NGOs and international organisations, and a source of frustration for IDPs. The 2014 law only guarantees IDPs' rights and freedoms in areas under government control, leaving those in NGCAs and contact line settlements such as, Yasunuvata and Maryinka districts in Donetsk with no access to the national civil registration system.⁶⁹

In an effort to close this gap, new legislation introduced in February 2016 allows relatives or other legal representatives to apply to a court in government controlled areas for establishing facts of birth and death occurring in NGCAs.⁷⁰ It also stipulates that such cases should be given immediate consideration and prompt judicial rulings. According to data from the Ukraine's Ministry of Justice, 6,000 IDPs living in NGCAs had exercised their rights under the new amendment in the first three months after its enactment, which has improved their access to social benefits.⁷¹

Despite the improvements in civil registration procedures mentioned above, the system is still not comprehensive and still poses obstacles for some IDPs. Unlike other Ukrainian citizens, who can apply for documentation at local registry offices, IDPs who cross the contact line from NGCAs have to resort to court procedures.⁷² This dual treatment arguably runs contrary to Guiding Principle Four. It also puts an extra burden on an already

⁶⁹ Vostok SOS, 'Analysis of internally displaced persons' (IDP) rights realization problems, (January 2016), <http://xn---ctbjbaaa1cngqno8ec6vla.com.ua/1/IDPs_key_issues.pdf> accessed 2 July 2016

⁷⁰ Government of Ukraine, 'Law on Introducing Changes into Civil Procedural Code on Recognising Facts of Birth and Death on the Temporarily Occupied Territories', (February 2016) <<http://goo.gl/iffMqU>> accessed 2 July 2016 (Ukrainian)

⁷¹ UNHCR, 'Key Protection Concerns and UNHCR Recommendations' (September 2016)

⁷² Vostok SOS, "Letter of appeal by the civil society members to the Ministry of Justice of Ukraine, people's deputies of Ukraine, and Minister of Temporarily Occupied Territories and IDPs"(May 2016) <<http://goo.gl/6BcZlA>> accessed 2 July 2016 (Ukrainian)

overstretched judiciary and on IDPs themselves, who struggle with time-consuming and discriminatory practices.

The strict requirement for identification documents leaves those without them less protected and more vulnerable. Internally displaced Roma people tend not to have access to financial and social support programmes because of their undocumented status. Around 6,000 Roma have been unable to register as IDPs, and the impact on their standard of living has led to secondary displacement either within areas under government control or back to NGCAs.⁷³

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Besides the discriminatory treatment, there are additional arguments in favor of administrative procedures. First, court fees remain to be challenging for many IDPs' families due to the financial constraints which may result in non-registration of fact of birth leading to statelessness of a child. In this respect, adoption of a draft Law no. 4394 "*On amendments to the Law of Ukraine 'On Court Fees'*" stipulating cancellation of court fees for IDPs would facilitate processing in the GCAs cases on establishing the fact of birth/death.

Second, only relatives and legal representatives of the deceased may apply to court through a simplified procedure to establish the fact of death, whereas in practice often neighbours and friends have to apply to the court which undermines the access to the procedure.⁷⁵

⁷³ UNHCR, "International Protection Considerations related to developments in Ukraine – Update II" (January 2015) <<http://goo.gl/W35yJ0>> accessed 2 July 2016

⁷⁴ UNHCR Ukraine, 'Key Protection Concerns and UNHCR Recommendations' (February 2016) <<http://goo.gl/I7TlPt>> accessed 2 July 2016

⁷⁵ Joint statement of the civil society, (September 2016) <http://vpl.com.ua/uk/news/ukrayinski_pravozakhysnyky_zustrilys_iz_spetsialnym_dopovidachem_oon_z_prav_lyudyny_z_pytan_vnutrishno_peremishchenykh_osib/> accessed 2 July 2016

Third, the judicial practice shows that there is a high probability of non-admissibility of the applications by the courts on the basis of the lack of jurisdiction.⁷⁶ This means that there is a risk of applications being left unaddressed.

Drawing upon Ukraine's commitment envisaged in the IV Geneva Convention⁷⁷ and The Advisory Opinion of the International Court of Justice⁷⁸ urging states to facilitate the identification of children, Ukraine should ensure that IDPs living in NGCAs have access to the administrative procedures for the issuing of birth certificates. As such, arrangements including legislative reform should be made to ensure that administrative registration procedures are available to all.

3.1.2.3 Denial of the IDPs' voting rights

The elections of 2014 demonstrated one of the biggest legal gaps which is still unaddressed until now: IDPs' inability to vote in the parliamentary elections. Same problem concerns local elections. The denial of voting rights of IDPs in Ukraine is not in line with international legal norms, as it violates UN Guiding Principle 1 on non-discrimination and is inconsistent with the Recommendations of the Committee of Ministers of the Council of Europe, Recommendations of the PACE defining the obligations of States to legally ensure the rights of displaced persons during the elections. It also violates Ukrainian Constitution, in particular Article 38 stipulating equality of all citizens of Ukraine and Article 14 of the IDP Law ensuring that IDPs have same rights and freedoms with other persons who permanently

⁷⁶ Right to Protection, 'The Question of Jurisdiction in the Cases of Establishment of the Facts of Birth and Deaths' (May 2016)
<http://vpl.com.ua/uk/news/pytannya_pidsudnosti_u_spravakh_pro_vstanovlennya_faktu_smerti_na_okupovani_j_terytorii/> accessed 2 July 2016

⁷⁷ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Article 50

⁷⁸ The Advisory Opinion of the International Court of Justice dated June 21, 1971 "Legal consequences for states on the continued presence of South Africa in Namibia" provides that the invalidity of the documents issued in the occupied territories, cannot apply to the documents, the non-recognition of which can prejudice the rights of the residents of such territory.

reside in Ukraine.

In practical terms, this legal gap translates into nearly 3.5 % of electorate not being able to express their political views. Impeded access to realization of one of the key political rights presents a significant threat to the rule of law in the country and undermines the legitimacy of the elections as such.⁷⁹

The advocacy efforts for the development of the mechanism enabling Ukrainian IDPs to vote, have been partially addressed by the Resolution of The Supreme Council of Ukraine on «*The state of the rights of internally displaced persons and citizens of Ukraine residing in the temporarily occupied territory of Ukraine, and in the temporarily uncontrolled territory in the area of the anti-terrorist operation*» adopted in March 2016. The recommendations of the resolution, inter alia, call upon the Cabinet of Ministers of Ukraine to “*prepare and submit to the Verkhovna Rada of Ukraine a number of legislative proposals on the possibility of changing voting addresses of IDPs based on personal applications and IDP certificates*”.⁸⁰

However, the problem remains unsolved. As of today, there are three pending bills suggesting legislative solutions on how to tackle the registration issue without denial of the IDPs’ voting rights.⁸¹ Alas, none of the draft bills has received an approval from the Parliament of Ukraine and further advocacy is required to guarantee that the mistakes of the elections in 2014 are not repeated in the elections of 2019.

3.1.3 Challenges in realization of the IDPs’ right to social security: verification of social payments

In accordance with the CoM Resolution 505, Ukrainian able-bodied IDPs are entitled to monthly targeted assistance amounting to 422 UAH (17 USD), while incapacitated IDPs receive 884 UAH (35 USD) per month. However, recent incidents of suspension of social

⁷⁹ Right to Protection, “Human Rights Advocates Met with the UN Special Rapporteur on the Human Rights of IDPs” (September 2016) < <http://vpl.com.ua/en/news/ukrainian-human-rights-advocates-met-with-the-un-special-rapporteur-on-the-human-rights-of-idps> > accessed 2 October 2016

⁸⁰ Ibid

⁸¹ Ibid

payments to IDPs reveal brutal violations of the IDPs' right to social security.

In response to allegations of IDPs using fraudulent registration certificates bearing incorrect addresses to receive financial support, in February 2016 the government suspended social payments to 150,000 beneficiaries.⁸² MoSP issued a letter instructing all of its regional offices to introduce a verification procedure for IDPs' registration certificates and authorizing payments to be cut in cases of fraud. There is no official figure for the suspensions, but some sources suggest as many as 500,000 people may have been affected.⁸³ Suspensions covered not only payments of targeted assistance to IDPs, but also social payments not related to the IDP-status, such as pensions.

Civil society and international organisations were severely critical of the suspensions and particularly the lack of transparency surrounding the new verification procedure, as well as the lack of clearly defined procedural regulations which potentially might have resulted in arbitrariness of its application. To ensure that the verification procedure is effective and consistent, on 8 June 2016 the GoU adopted the CoM Resolution 365 which stipulates the mechanism of renewal of the IDPs social entitlements and the mechanism of control over the payments at the IDPs' habitual places of residence.

According to the procedural guidelines envisaged in the resolution, a social inspector from the Department of Social Protection in the respective district is assigned to visit the address under verification and fill in the living conditions assessment form at least every six months. Local departments of Ministry of Internal affairs, State Migration Service, State Security Service, National Police, State Finance Inspection, State Audit Service and Pension Fund also may be involved in the verification procedure if the local authority created a working group for this purpose with these bodies.

⁸² OCHA, Humanitarian Bulletin: Ukraine Issue, February 2016, available at <http://goo.gl/M0g9Hk>

⁸³ Protection cluster, Ukraine fact sheet: Suspension of payments of social benefits to IDPs, March 2016, available at <http://goo.gl/pxxOdR>

In case of the absence of an IDP at the place of residence, a note with a request to report to the Department of Social Protection within three days is issued, followed by a registered letter to an IDP. If the IDP fails to report within an established deadline, social inspectors send an inquiry to the State Migration Services to learn if an IDP had left to the NGCAs. Being away from the registered habitual place of residence for a period longer than 60 days may serve as a justified basis for the suspension of social entitlements. This can be extended to 90 days by application of the IDP in the case of sufficient grounds. The necessity to reform this strict requirement will be further discussed in the next chapter while comparing this provision with a similar regulation in the Georgian IDP Law.

The Department of Social Protection is authorized to conduct additional checks in case there is any new information regarding the changes of the IDPs' habitual place of residence or on the basis of recommendations from the Ministry of Finance or Oschadbank, Ukraine's state savings bank.

Despite the positive strides brought by the Resolution, such as a possibility to receive social payments at the habitual places of residence, clearly defined criteria for the verification, and enhanced powers of the local authorities in dealing with the displacement crisis, there are major concerns as for its lawfulness and effectiveness.

Pertaining to its lawfulness, the verification procedure is not compliant with article 46 of Ukraine's constitution because it undermines citizens' right to benefits ensured by "general mandatory state social insurance". It also violates Guiding Principle 17, which guarantees the right to respect for family life; and 18, which protects the right to an adequate standard of living.

The most problematic aspect of the in compliance of verification with the international and Ukrainian legal norms refers to pension. The verification procedure covers pensions despite the different nature of this social entitlement which should not be linked to the IDP

status and the place of residence. The Pension Laws of Ukraine, as well as international customary law and the decision of ECHR in the case *Pichkur v. Ukraine*, establish that deprivation of the retirement pension on the basis of the place of residence is unlawful and discriminatory. In addition, suspension of pensions on any basis violates the point 8 of the Minsk II Agreement which envisages full restoration of social and economic connections, including pensions. Also, the necessity to cross the contact line to receive pension impedes IDPs' registration and triggers de facto displacement.⁸⁴

Another concern of the civil society and international organization is authorization of the Ministry of Finance and SBU (Security Services of Ukraine) to issue the lists of IDPs with recommendations for the additional checks. One of the grounds for payments suspension is information from Oschadbank using CoM resolution 637 indicating that an IDP has a deposit higher than 559,000 USD (14,500.00 UAH). This makes the person of concern ineligible for financial targeted assistance according to the cabinet resolution 505. Disclosing bank account information is a clear violation of the bank secrecy protected by the international legal norms. Disregarding customary law norms by the GoU potentially paves a way to the deterioration of the status of rule of law in the country at large.

Pertaining to the question of effectiveness of the verification mechanism envisaged in the resolution, there are major concerns regarding its feasibility. In the beginning, the implementation of verification has been hindered by the absence of the unified database of IDPs. While the issue has been addressed by the CoM Resolution 646 adopted on 22 September 2016 establishing a unified database of IDPs, the process of incorporating the data from the database in the current verification process has not been harmonized yet. Despite the clarity in assigned responsibilities of the Department of Social Protection, the lack of human resources, and social inspectors per IDPs ratio in particular, significantly undermines the

⁸⁴ UNHCR, 'Key Protection Concerns and UNHCR Recommendations', September 2016

feasibility of the mechanism.⁸⁵

Even though the CoM Resolution 365 has equipped regional and district authorities with the guidelines on how to implement the legislation at the local level, further work is required to ensure the standard application of the unified procedure in each oblast to reinforce legal certainty. As we see from the incidents like massive invitations of IDPs in Dnipro to visit the local authorities in person for the verification purposes which is not envisaged in the legislation, there is a pressing need in the verification monitoring to guarantee unified norms and standards at the regional level. The usage of the additional data as a legitimized basis to stop or suspend social entitlements of IDPs has been severely criticized by the Ukrainian civil society.⁸⁶ There is an alarming concern of the SBU lists becoming a tool to mask arbitrariness due to the lack of clearly defined criteria that may serve as a basis for the SBU recommendations for additional checks.

There is also an emerging concern regarding the practical deficiencies of the CoM Resolution stipulating basis for the payments' termination. The recent court decision required the IDP from Zaporizhzhya to return all the money received as a targeted assistance on the basis of possession of the premises with total area of 6 square meters for the family of three. This shows that ownership of the "living premises on the GCAs" as one of the criteria for the termination of targeted financial assistance needs to be reformulated to avoid blanket terminations of social payments in the situation when they are mostly needed.⁸⁷

⁸⁵ TV Plus, 'The Department of Social Protection checks IDPs' (July 2016) <<http://tvplus.dn.ua/news/13/full/2054/>> accessed 2 October 2016 (Ukrainian)

⁸⁶ CrimeaSOS, 'Civil Society Urges GoU to Consider their Concerns While Reforming the Mechanism of the Social Payments Verification' (August 2016) <<http://krymsos.com/settlers/news/gromadski-aktivisti-vimagayut-vid-kabminu-vrakhuvati-yikh-dumku-pid-chas-vnesennya-zmin-do-protseduri-narakhuvannya-sotsialnikh-viplat-pereselentsyam/>> accessed 2 October 2016 (Ukrainian)

⁸⁷ Right to Protect, 'Due to the Legislative Deficiency IDPs Who Are the Owners of Tiny Premises Have to Pay Back Targeted Financial Assistance, October 2016' (October 2016) <<http://vpl.com.ua/ru/media-about-us/v-zaporozhe-pereselentsev-cherez-sud-zastavlyayut-vozvraschat-matpomoshch/>> accessed 25 October 2016 (Russian)

3.2 Analysis of the Georgian normative framework on internal displacement

3.2.1 Legislative Response to Displacement in Georgia: Brief Overview

The secessionist conflicts in 1990s in the Tskhinvali Region-South Ossetia and the Abkhazian Autonomous Republic, and again in 2008 in South Ossetia triggered two waves of massive internal displacement in Georgia with a total number of the displaced population reaching 246,000. With IDPs representing roughly 6 % of the entire population, Georgia breaks the record as one of the countries with the highest incidents of internal displacement in the world.⁸⁸

The government of Georgia displays an active stance in ensuring legislative response to the displacement. A clear evidence to this is an adoption of over 200 legislative acts with provisions tackling IDPs' issues.⁸⁹

The first Georgian Law on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia (hereafter: Law on IDPs) spelled out the major rights and freedoms of IDPs and focused primarily on the social and economic assistance due to the dire humanitarian situation faced by the first caseload of IDPs in the 1990s.

The law was enacted in 1996, two years before the adoption of the key international framework on internal displacement. In its Preamble, the law refers to international legal standards, stipulates IDP recognition principles (Articles 3 and 4), urges for budget allocation for the law's implementation (Article 10), and establishes liability for violations of the protected rights of IDPs (Article 11).⁹⁰ All the aforementioned progressive provisions demonstrate that Georgia was ahead of the international community in developing IDP law

⁸⁸ World Bank, 'Georgia Transitioning from Status to Needs Based Assistance for IDPs' (2015) Report No: ACS16557 <<http://elibrary.worldbank.org/doi/abs/10.1596/24412>> accessed 26 October 2016

⁸⁹ UN High Commissioner for Refugees (UNHCR), 'Protection Of Internally Displaced Persons In Georgia: A Gap Analysis' (2009) <<http://www.refworld.org/docid/53e1e65d4.html>> accessed 15 November 2016.

⁹⁰ Georgia, 'Law on Internally Displaced Persons-Persecuted' (1996), Law No. 335-II S <<http://www.legislationline.org/documents/id/5529>> accessed 1 September 2016

prior to the UN Guiding Principles.

Despite its progressive character, the law, as any other law, was far from being perfectly tailored for the needs of the persons of concern. Georgia addressed key issues in successive amendments in 2001, 2005, 2006, and most recently in 2014.⁹¹ Systematic revisions ensured compliance with such norms enshrined in the Principles as non-discrimination (Article 7 in the IDP Law 2014) and protection from displacement (Article 5 in the IDP Law 2014).⁹² With every new amendment, the IDP Law of Georgia enhanced its compliance with international legal framework on displacement enshrined in the UN Guiding Principles.

3.2.2 Equality before law for Georgian IDPs

3.2.2.1 Granting IDP Status: Legislative Revisions Enhancing Inclusivity of IDP Law in Georgia

The first Georgian ID law adopted in 1996 aimed at inclusivity and a broad scope of protection. Initially, the law defined an IDP as *“the citizen of Georgia or stateless person permanently residing in Georgia, who was forced to leave the place of his/her habitual residence and was displaced (within the territory of Georgia) as a result of a threat to his/her or his/her family member’s life, health or freedom due to the aggression of foreign country, internal conflicts or mass violation of human rights.”*⁹³ Considering that the law had been adopted before the UN Guiding Principles, the comprehensive definition demonstrates Georgia’s progressive stance in tackling displacement. For example, we see that stateless people were included in the scope of the protection from the very beginning, while, in Ukraine, including stateless people required advocacy of the civil society and international organisations for legislative amendments.

⁹¹ UN High Commissioner for Refugees (UNHCR), 'Protection Of Internally Displaced Persons In Georgia: A Gap Analysis' (2009) <<http://www.refworld.org/docid/53e1e65d4.html>> accessed 15 November 2016.

⁹² Ibid

⁹³ Georgia, 'Law on Internally Displaced Persons-Persecuted' (1996), Law No. 335-II S <<http://www.legislationline.org/documents/id/5529>> accessed 1 September 2016

The Georgian ID law of 1996 envisages a considerate and inclusive legislative solution to tackle the emergency challenge of displacement and stipulates that *“in case of mass and extreme displacement of the population MRA before granting a person IDP status according to the relevant procedure, immediately recognize him/her as an IDP on a temporary basis.”*⁹⁴

This immediate recognition principle clearly indicates the willingness of the government to ensure that no person of concern is left out and that access to the protection program is guaranteed within an inclusive approach. The approach of immediate recognition implies that status is automatically granted but waived in case of non-compliance. This shows that commitment to secure humanitarian support prevails over the purely bureaucratic compliance considerations. This approach contrasts with the policies of the Ukrainian government, especially if we look at the “witch-hunting” attitude of the government in relation to the control of social payments discussed before.

Constant review of shortcomings of the laws and decrees addressing IDP issues and activism of civil society in this matter, eventually, led to the evolution of the IDP Law of 2014, guaranteeing some extra provisions aimed to ensure equality of IDPs before the law with other people residing in Georgia. One of these provisions is an opportunity for IDPs to register outside of Georgia. As stipulated by Article 9 (1), *“If a person leaves the territory of Georgia during displacement, he/she shall apply to the diplomatic mission of Georgia/consulate or to the LEPL State Services Development Agency under the Ministry of Justice of Georgia for consular registration not later than two years after displacement [has] occurred.”*⁹⁵ This paves a way to the holistic interpretation of the IDP status - the important component of which is its political weight, not merely a mechanism to access humanitarian support. Displaced Georgians who currently reside outside of Georgia have interests in

⁹⁴ Ibid

⁹⁵ Georgia, ‘Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia’ (2014) Law No 1982-IIS <<https://matsne.gov.ge/en/document/view/2244506>> accessed 3 August 2016

maintaining their IDP statuses secured in case of their return to homeland. This provision clearly demonstrates that IDP status in Georgia has a strong symbolic value and is meaningful even in cases when social benefits such as social allowance are excluded. As a recent World Bank study shows, IDPs in Georgia want to preserve their status due to the emotional attachment to their homeland, and due to the belief that IDP status signifies the government's commitment for future reintegration of the currently occupied territories.

Some of the statements of the interviewed IDPs clearly revealed their emotional attachment and their perceived symbolic value of the status: *“Somehow we still feel ourselves to be Abkhazians. Abkhazia is my homeland, and whatever palaces I [may] have here, I [will] still miss Abkhazia. If there is no status, then I will become an ordinary citizen and lose Abkhazia”*.⁹⁶

Other statements of IDPs indicated that IDP status in Georgia was understood as a political promise for their return: *“We have this status and we should keep this status, till we go back to our homes.” “If I won’t be able to go back to my home, my children will. This status is a reminder.”*⁹⁷

Another legislative novelty introduced by the amendments of the IDP Law in 2014 is a provision granting IDP status to children born to IDPs' parents. According to Article 6.2, *“An underage person is entitled to an IDP status if one or both of the parents have and/or had IDP status.”*⁹⁸ This legislative measure is another sign of the inclusive approach aiming to cover the persons of concern belonging to various categories of vulnerability and make the IDP recognition as simple and hassle-free as possible by means of effective legislation.

Strategic litigation as a powerful tool to tackle discrimination in granting IDP status

The 1996 IDP Law was amended several times over the years, responding to the legal

⁹⁶ World Bank, ‘Georgia Transitioning from Status to Needs Based Assistance for IDPs’ (2015) Report No: ACS16557 <<http://elibrary.worldbank.org/doi/abs/10.1596/24412>> accessed 26 October 2016

⁹⁷ Ibid

⁹⁸ Georgia, ‘Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia’ (2014) Law No 1982-IIS <<https://matsne.gov.ge/en/document/view/2244506>> accessed 3 August 2016

gaps identified in the process of its implementation. One of the essential legal gaps, which was later successfully addressed by lawmakers, was the exclusion of villages along the administrative border line (ABL) from the protection regime envisaged by the IDP Law 1996. Despite the fact that residents of the ABL villages faced similar security, human rights and humanitarian challenges as IDPs fleeing from the territories officially recognized as occupied, these so-called “grey zone” residents did not fall under the category of IDPs as envisaged by the IDP Law 1996.⁹⁹ It was not until May 2013, approximately 20+ years since the first outbreak of internal displacement in Georgia, that the residents of the ABL villages were granted IDP status.

The significant and long awaited change came with the decision of the Constitutional Court of Georgia to declare the wording “*from Georgia’s occupying territories*” in the definition stipulated in the IDP Law as unconstitutional. In the landmark case *Citizen of Georgia Tristan Mamagulashvili v. the Parliament of Georgia*¹⁰⁰, the Court ruled that the IDP definition is not compliant with the Article 14 of the Constitution of Georgia which guarantees equality to all.¹⁰¹ The decision of the Constitutional Court of Georgia paved the way to further legislative revisions and, ultimately, led to more inclusive definition of IDP stipulated in the series of significant amendments in 2014.¹⁰² The power of the Constitutional Court to influence legislative processes should be highlighted in this respect and could serve as a model judicial system. As demonstrated by the zero impact of the Ukraine’s Court of Cassation decision on the unlawfulness of suspension of social payments envisaged by the CoM resolution 595, further work is required to ensure that the courts play an important role

⁹⁹ Georgia, ‘Law on Internally Displaced Persons-Persecuted’ (1996), Law No. 335-II S <<http://www.legislationline.org/documents/id/5529>> accessed 1 September 2016

¹⁰⁰ *Citizen of Georgia Tristan Mamagulashvili v the Parliament of Georgia* [2013] The Constitutional Court of Georgia, N1/3/534 (The Constitutional Court of Georgia).

¹⁰¹ Public Defender of Georgia, ‘Human Rights Situation Of Internally Displaced Persons And Conflict Affected Individuals In Georgia’ (2013) <<http://ombudsman.ge/uploads/other/1/1621.pdf>> accessed 9 October 2016.

¹⁰² Important strategic litigation case brought to the court by the Georgian Young Lawyers Association (GYLA)

in the judicial review process of determining constitutionality in all legislative acts.

3.2.2.2 Voting rights of IDPs in Georgia: model of advocacy for equality through judicial mechanisms

Talking about equality before law, special attention should be paid to the voting rights of IDPs, as they ensure the participation of IDPs in political processes and integration of IDPs into the public life at large.

As already mentioned in the previous sub-chapter, Ukrainian IDPs cannot vote in either parliamentary or local elections. Initially, Georgian IDPs faced similar problems. In the 1990s, the electoral laws in Georgia restricted voting rights of IDPs both for parliamentary and local elections. Problems in regulations for IDPs' voting, both in Ukraine and Georgia, stem from the fact that voting is directly linked to registration at the place of residence. In the Georgian case, it meant that IDPs willing to vote would need to re-register at their new place of residence, which would result in the loss of their IDP status, and, consequently, loss of all social entitlements aligned with the status. Given the special aforementioned value of IDP status, both from humanitarian and political perspectives, Georgian IDPs would choose to remain IDPs at the expenses of not exercising their voting rights.¹⁰³

The 1998 Law of Georgia on Elections of Bodies of Local Government stipulated explicit provisions on IDPs' ineligibility to vote in local elections in their place of residence.¹⁰⁴ Persistent and systematic advocacy efforts of the IDP communities, civil society organisations, and the international community eventually resulted in compelling revisions of the Unified Electoral Code. In 2001, necessary amendments enabled IDPs to participate in local elections, and in 2003 in parliamentary elections, voiding all restrictions, including the loss of IDP status. Thus, Article 5 of the revised electoral code guarantees the right of every

¹⁰³ World Bank, 'Georgia Transitioning from Status to Needs Based Assistance for IDPs' (2015) Report No: ACS16557 <<http://elibrary.worldbank.org/doi/abs/10.1596/24412>> accessed 26 October 2016

¹⁰⁴ Columbia University School of International and Public Affairs, 'Promoting IDPs And Women's Voices In Post-Conflict Georgia' (2012) <<https://sipa.columbia.edu/academics/capstone-workshops/promoting-idps-and-womens-voices-in-post-conflict-georgia>> accessed 11 August 2016.

citizen 18 years and older, including an IDP, to vote in all local, parliamentary and presidential elections.¹⁰⁵ These legislative revisions, achieved through application to the Constitutional Court of Georgia, significantly enhanced the political and civil rights of IDPs. This successful advocacy through available judicial mechanisms serves as an inspirational model for the defenders of the rights of IDPs in Ukraine advocating for the laws enabling IDPs to vote at all levels.

The role of the State Strategy 2007 in broadening the scope of IDPs' protection in Georgia

All the legislative revisions that addressed legal gaps restricting principle of non-discrimination and equality might have not been possible without an important advocacy instrument adopted in 2007—State Strategy for Internally Displaced Persons-Persecuted. The Decree adopting the Strategy defined its two major goals as “*creating condition[s] for [a] dignified and safe return and support of decent living conditions for the displaced population and their participation in the society.*”¹⁰⁶ By stating its objectives, the Strategy clearly indicated an important shift in political rhetoric regarding mutual exclusiveness of return and integration.¹⁰⁷

The non-discrimination and equality of IDPs before law are referred to as the key principles required for their full-fledged integration. In particular, Article 2.2 stipulates that IDPs have the same rights and freedoms as other residents of Georgia, but also draws attention to the fact that despite *de jure* equality, full integration remains one of the prominent challenges:

“It should be pointed out that from the legal viewpoint, IDPs have all the rights as

¹⁰⁵ Ibid

¹⁰⁶ Georgia, ‘On Approving of the State Strategy for Internally Displaced Persons – Persecuted’ (2007) Decree 47 of the Government of Georgia <<http://reliefweb.int/report/georgia/state-strategy-internally-displaced-persons-persecuted-approved-government-georgian>> accessed 20 October 2016

¹⁰⁷ Columbia University School of International and Public Affairs, ‘Promoting IDPs And Women’s Voices In Post-Conflict Georgia’ (2012) <<https://sipa.columbia.edu/academics/capstone-workshops/promoting-idps-and-womens-voices-in-post-conflict-georgia>> accessed 11 August 2016.

other

citizens of Georgia; despite this, however, they are not fully integrated in the society:

a) In accordance with the Constitution of Georgia, IDPs, like other populations of the country, have the right to choose any place in Georgia for their residence;

b) IDPs have the right to equally benefit from the state and other programs of social welfare, healthcare, and education that the government of Georgia or the non-governmental sector offers to any citizen of Georgia;

c) IDPs have the right to pursue economic activity and to have the same access to economic resources as any citizen of Georgia;

d) IDPs have the right to participate equally in the public discussion of civil issues and in the process of decision-making and to exercise equally their democratic rights of active vote (to elect) and passive vote (to be elected).¹⁰⁸

During interviews conducted within the framework of this research, the majority of the interviewees tended to refer to the State Strategy for the Internally Displaced Persons as an important visionary document envisaging state policy towards IDPs.¹⁰⁹ This shows that the Strategy has proved to be a significant instrument for advocacy to invoke the Government's commitments while pushing for legislative changes to guarantee social equity between IDPs and host communities.

3.2.2.3. Civil registration and the issuance of documents: avoiding bureaucratic limbo

The unplanned relocations that IDPs are compelled to undergo are always accompanied by various bureaucratic challenges. That is why any additional bureaucratic procedures [different from treatment of the rest of the population] create an additional burden for IDPs and have to be avoided as much as possible. In terms of civil registration procedures,

¹⁰⁸ Georgia, 'On Approving of the State Strategy for Internally Displaced Persons – Persecuted' (2007) Decree 47 of the Government of Georgia <<http://reliefweb.int/report/georgia/state-strategy-internally-displaced-persons-persecuted-approved-government-georgian>> accessed 20 October 2016

¹⁰⁹ Interviews with IDP experts in Tbilisi, Georgia, March 2016

Georgian IDPs are in a more favourable position than Ukrainian IDPs. In accordance with the *Georgian law on civil acts*¹¹⁰, administrative procedures regulate establishment of facts of birth and death for all inhabitants of Georgia, including IDPs.

Establishment of fact of birth for IDPs in Georgia

Article 21 (Chapter II) stipulates that following documents represent justified proof for registration purposes: medical certificate, decision of the authorized body about the establishment of the fact of birth, document certifying birth fact by the authorized body of a foreign state. Most importantly, in accordance with the decree of the Minister of Justice of Georgia, other documents can be defined to establish the fact of birth.¹¹¹ This wide range of acceptable documents ensures flexibility of the procedure, which is crucial for the IDPs who face various challenges related to documentation undermining their access to justice, including loss of documents and non-recognition of documents issued by de facto authorities.

Notably, in accordance with the Article 22 (Chapter II) amended as of May.2012 N6301, the civil registry bodies are authorized to establish fact of birth of the children who were born abroad and children born to the stateless parents.¹¹²

Given a particular vulnerability of the IDPs' children, it is crucially important that their registration is not only available and envisaged in the national legislation, but that the registration procedures function in the most simplified possible mode. Cumbersome procedures of registration present a serious threat to children's access to rights, as it happened in the *Bebolution case* in Bosnia and Herzegovina, when an inability to reach a decision over the issuing citizen's identification number prevented newly born children from being registered, which caused the death of a baby girl who was unable to obtain the much needed timely medical assistance she required.

¹¹⁰ Georgia, 'Law on Civil Acts of Georgia ' (2011) Law No 5562
<<https://matsne.gov.ge/ru/document/view/1541247>> accessed 1 August 2016

¹¹¹ Ibid

¹¹² Ibid

From this standpoint, the administrative procedures are more suitable than court mechanisms to establish the fact of birth of IDPs as they are less cumbersome and more efficient in terms of usage of time and financial resources. Therefore, the experience of Georgia and other countries where administrative practice is the norm to regulate the issue of children registration (e.g. Moldova, Namibia, and Kosovo) can serve as a model for further reforms in Ukraine.

Establishment of fact of death for IDPs in Georgia

Establishing fact of death of IDPs in Georgia is also regulated by administrative procedures in contrast to the court proceedings governing this matter in Ukraine. Importantly, Georgia has mandated less criteria than Ukraine for the documents establishing the fact of death and eligible applicants authorized to submit the application to the civil registry office. According to the Article 71 (Chapter VIII) of the Law on Civil Acts in Georgia, “*any person of age and working ability and any administrative body*” may address the office of civil registration with the application for the establishment of the person’s death fact.¹¹³ As explained in the previous chapter, in Ukraine, the list of eligible persons who can apply for the establishment of an IDP’s fact of death through court procedure is restricted to relatives and neighbours of the deceased. This clearly presents a problem in cases when such an application may come from people not related to the deceased and creates unnecessary normative restraints undermining efficiency of the procedure. Article 72 (Chapter VIII) of the Law on Civil Acts of Georgia stipulates a wide range of documents that can be submitted as proof certifying the fact of death. The final provision of the article spells out that the list is not exhaustive in itself. It ensures required flexibility of the procedure by stating that “*in accordance with the decree of the Minister of Justice of Georgia, for the purpose of*

¹¹³ Georgia, ‘Law on Civil Acts of Georgia ’ (2011) Law No 5562
<<https://matsne.gov.ge/ru/document/view/1541247>> accessed 1 August 2016

*registration, other documents might be accepted to establish the fact of death”.*¹¹⁴

3.2.3 Right to social security: effective and non-discriminatory access to targeted financial assistance to IDPs in Georgia

Poverty has proven to be one of the major challenges faced by Georgian IDPs, as reported by the UNDP survey on social vulnerability.¹¹⁵ As pointed out in the State Strategy on Internal Displaced Persons, for many IDPs, their existence depends upon state allowances and international humanitarian assistance.

The Government of Georgia expressed its commitment to address social and economic vulnerabilities of IDPs in the very beginning of the displacement crisis. Article 3 of the first Law on Internal Displaced Persons of 1996 envisaged the right of IDPs to “*receive lump-sum financial and other governmental assistance.*”¹¹⁶ The provision on social payments has undergone significant changes and this legislative evolution demonstrates how the topic of IDP allowance has evolved through time.

Initially, the key approach to targeted financial assistance was status-based, which meant that being an IDP amounted to eligibility to receive a fixed amount of allowance. Given the fact that the poverty among IDPs was striking and the state financial resources were limited, the need to ensure the most efficient use of the allocated funds has emerged leading to systematic needs assessments and identification of vulnerabilities. Therefore, the distinction between IDPs living in collective centers (CCs) and IDPs living independently has reflected this change in the amendments to the IDP law according to which IDPs living in CCs were entitled to 22 GEL (approximately 9 USD), while IDPs living in private households could receive a slightly higher amount of money, i.e. 28 GEL (approximately 11 USD).¹¹⁷

¹¹⁴ Georgia, ‘Law on Civil Acts of Georgia’ (2011) Law No 5562
<<https://matsne.gov.ge/ru/document/view/1541247>> accessed 1 August 2016

¹¹⁵ See further UDNP Social Vulnerability index

¹¹⁶ Georgia, ‘Law on Internally Displaced Persons-Persecuted’ (1996), Law No. 335-II S
<<http://www.legislationline.org/documents/id/5529>> accessed 1 September 2016

¹¹⁷ ‘In The Waiting Room: Internally Displaced Persons In Georgia’ [2010] Amnesty International Publications

This distinction between two categories of IDPs based on their place of residence has been voided in the amendments to the latest version of IDP Law in 2014. Article 12 (1a) guarantees that every IDP has a right to receive IDP allowance amounting to 45 GEL (equivalent of 18 USD) and also the right to receive social and other types of assistances in accordance with the rules and conditions established by Georgian legislation.

Nonetheless, this does not mean that the latest version of law does not take into account the specific situation of IDPs and levels of their vulnerability. The law, on the contrary, paves the way to a new approach according to which IDPs can be entitled to IDP allowance or social allowance depending on their social vulnerability. This alternative means of assistance is secured through state program not specifically targeting IDPs, but addressing issues of social vulnerability in Georgia at large.¹¹⁸ Thus, Article 11.2(d) of the IDP Law 2014 stipulates the termination of the IDPs' allowance to *"an IDP agreed in writing to receive the social allowance foreseen for the families at the edge of the poverty line."*¹¹⁹

This enables IDPs to choose between status-based allowance and needs-based allowance scheme available to the entire population of Georgia, not only to IDPs. The introduction of the option to be treated on the basis of social vulnerability rather than IDP status signifies gradual transition to the needs-based approach in financial assistance, while the current system may be referred to as the mixed system of support.

3.2.3.1 Termination and suspension of IDP allowance provisions in IDP law: remaining on the side of IDPs

The question of termination and/or suspension of IDP allowance deserves particular attention within the framework of this research and serves as a litmus test for the non-discriminatory access to IDP allowance and government's general willingness to have

<<https://www.amnesty.org/en/documents/EUR56/002/2010/en/>> accessed 25 November 2016.

¹¹⁸ 'In The Waiting Room: Internally Displaced Persons In Georgia' [2010] Amnesty International Publications <<https://www.amnesty.org/en/documents/EUR56/002/2010/en/>> accessed 25 November 2016.

¹¹⁹ Georgia, 'Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia' (2014) Law No 1982-IIS <<https://matsne.gov.ge/en/document/view/2244506>> accessed 3 August 2016

restricted or inclusive policies on social payment.

Article 11(2) of the IDP Law on Internally Displaced Persons, outlines the following grounds for termination of targeted assistance to IDPs in Georgia:

- a) in case of termination of an IDP status;*
- b) if the person applied for the termination of an IDP allowance in writing;*
- c) in case an IDP left Georgia for more than two months, except when the person left the country due to a business trip, studies or medical treatment (these shall be proven by relevant documents), and the IDP informed the Ministry about it in advance in accordance with the rules established by the legislation;*
- d) An IDP agreed in writing to receive the social allowance foreseen for the families at the edge of the poverty line;*
- e) Taxable income of an IDP amounts to 1,250 GEL or more which is confirmed by the authorized body established by the Georgian legislation.¹²⁰*

Circumstances envisaged by the points a, c, and e are very similar to Ukrainian regulation of this matter. In a likewise manner, Ukrainian law presupposes that IDP allowance is linked to the IDP status (same with 11.2 (a)), not being physically present on the territory of Ukraine results in the suspension of payments (similar to 11.2 (c)), and proof of stable income which exceeds a certain fixed amount serves as a basis for the IDP allowance termination (similar to 11.3 (e)).

As previously described in the chapter analysing the implementation of the Ukrainian IDP law, the restriction regarding physical presence of IDPs to make them eligible for the allowance (reference) proves to be problematic and discriminatory to IDPs who have legitimate reasons to leave Ukraine for a longer period than 60 days, as prescribed by law. In this respect, while Georgian Law has similar restriction of 60 days, Georgian lawmakers have

¹²⁰ Georgia, 'Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia' (2014) Law No 1982-IIS <<https://matsne.gov.ge/en/document/view/2244506>> accessed 3 August 2016

demonstrated greater forethought in terms of IDPs who “*le[ave] the country due to business trip, studies or medical treatment*” (Article 11.2 (c)) by protecting IDP rights to preserve their allowance. This is a step forward in broadening the scope of protection of IDPs and can be taken as an example for the Ukrainian lawmakers.

3.2.3.2 Standard-setting: important legislative measures to reach substantial equality

Another important and problematic aspect identified during the analysis of the implementation of Ukrainian IDP laws and CoM decrees is lack of well-established standards when it comes to justified criteria for the suspension of payments. As stipulated by the CoM Resolution 505, ownership of the “living premises” serves as a justified ground for termination of payments in Ukraine without explicit explanation what living premises precisely stand for. While rationale behind this regulation is to avoid payments targeted for rental money for IDPs who have their own place to live, without set standards of “living premises,” the law in practice may lead to deprivation of IDP allowance even for those IDPs who do not have dignified housing secured for themselves.

In this regard, Georgian Government has developed a comprehensive normative basis for evaluation of adequacy of living conditions envisaged in *Decree of the Government of Georgia N403 of May 28, 2009 about Adoption of the Action Plan for the Implementation of the State Strategy on IDPs in 2009-2012*” and Minister’s Order N320. The dignified standards of a living space are outlined in these documents including such criteria as minimum space of at least 25-35 sq.m. for a family of one or two and obligatory presence of bathroom with hot water, equipped kitchen, etc.

If a similar regulation was enacted in Ukraine, cases of suspension of IDP allowance for a family of three having 6 sq. m. of “living premises” designed as a storage room would have been avoided thanks to clearly set standards based on the commitment to protect vulnerable individuals.

In addition to the regulations regarding allowance stipulated by the amended through the time law, there is also an important reference to the social assistance to IDPs in the State Strategy on Internally Displaced Persons adopted in 2007. The added value of the strategy is that it sets the visionary framework on how to deal with social support to IDPs. For the purpose of “*support of decent living conditions*” of IDPs, which is the second major goal of the State Strategy, there are two crucial things envisaged in the policy which should be highlighted. First, the focus of the state programs assisting IDPs is on development of their self-reliance reference). Instead of only ensuring delivery of a certain amount of money, the state aims to tackle the problem of “*social passiveness of IDPs, reluctance of initiative, and dependence on assistance.*”. This translates into the shift to the needs-based approach in social payments and avoidance of emphasis on the vulnerability only on the basis of being an IDP to known as “victim syndrome” and “syndrome of dependence”. Second, the State program encourages positive discrimination of IDPs required to achieve social equity of IDPs and host communities. In the chapter on Ensuring Social Equity in the Process of Providing Assistance to IDPs, it is explicitly mentioned that “*Social equity does not exclude the possibility of prioritizing assistance to IDPs when justified*”.¹²¹ This vision paved the way to further allocation of funds for IDP-targeted programs to achieve social equity.

Georgian experience clearly demonstrates that state strategy is a very powerful tool ensuring guidance in law and policy-making, which can be used by Ukraine as an inspiration model.

¹²¹ Georgia, ‘On Approving of the State Strategy for Internally Displaced Persons – Persecuted’ (2007) Decree 47 of the Government of Georgia <<http://reliefweb.int/report/georgia/state-strategy-internally-displaced-persons-persecuted-approved-government-georgian>> accessed 20 October 2016

3.3 Beyond legislation: lessons learnt in Georgia applicable for the Ukrainian policy-makers

This chapter goes beyond the pure legalistic perspective and aims to present a policy approach on how to enhance protection programs for IDPs in Ukraine. It does so by drawing upon lessons learnt in Georgia through the analysis of the experts' interviews conducted within the framework of this research. This chapter will lay the ground for policy-oriented recommendations for the Ukrainian government presented in the final conclusions.

The analysis touches upon two topics while assessing IDP policy-making: durable solutions for IDPs and modalities for coordination of the IDP-targeted programs. The ultimate goal of this chapter is to produce recommendations relevant for Ukraine based on lessons learnt in Georgia.

3.3.1 Ensuring Durable Solutions for IDPs

Harmfulness of “temporary problem” approach for the ID protection programs

In a political realm, conflict-induced internal displacement is often associated with the loss of territories and loss of population. Thus, it is not surprising that the rhetoric of the government may be politically aggressive when it comes to IDP policy-making. In challenging times and with the necessity of dealing with secessionist and separatist movements, restoration of territorial integrity is often perceived by the state as the topic of the highest priority. As a result, government's aspirations to restore territories and ensure safe return of IDPs to their homes may potentially lead to their failure to properly address the topic of integration of IDPs while the conflict lasts.

As pointed out by all interviewed experts on displacement in Georgia, one of the major challenges in IDP policy-making is the tendency to approach ID as a temporary

matter.¹²² When policy makers exhibit this tendency the rights and interests of the displaced population face the real risk of failing to even make it onto the state's agenda. In such cases civil society and the international community should intervene and assist in overcoming the political challenges barring progress. Aggressive politics of the Government towards *de facto* authorities should not by any means be translated into harsh or inconsiderate policies of the State towards its own citizens.

With the first wave of displacement in the 1990s, the prevailing political narrative was to treat IDPs as a temporary problem that would be overcome as soon as the secessionist conflicts were resolved.¹²³ IDPs were provided with humanitarian aid, while the issue of their integration was out of the table due to the “temporariness” of the problem. Shockingly, in a country with one of the acutest ID crises in the world, no unified IDP state policy was envisaged until 2007, i.e. more than ten years since the outbreak of displacement.

Most of the interviewed experts, have emphasized the necessity to deal with ID as an acute societal issue and avoid “temporary problem” approach which clearly undermines endeavours to ensure decent and dignified conditions of living for IDPs.¹²⁴

Housing policy for IDPs in Georgia is one of the most striking examples of why temporary solutions should be replaced with future-oriented policies guaranteeing dignified conditions for IDPs.

Initially, around 50 % of the first caseload of IDPs were resettled in former administrative buildings, such as kindergartens, hotels, factories.¹²⁵ Unfortunately, these buildings were not designed for residential use and many of them had only one bathroom for the entire floor and lacked functioning kitchens. In the spirit of “temporary solution of a temporary problem”, IDPs were placed in the administrative buildings with the aspiration that

¹²² Personal interviews with IDP experts (see Appendix A), March 2016

¹²³ Expert interviews (see Appendix A), March 2016

¹²⁴ Nana Sharia, personal interview, March 2016

¹²⁵ Ibid

soon after the conflict was resolved, they would be able to move back to their homes. In theory, and in absence of any other alternative, living in administrative centres for a short period of time may sound as a plausible solution. However, we need to remember one of the key features of internal displacement described in the introductory chapter--its protractedness. Given the nature of the secessionist conflicts, durable solutions is what is truly needed for ensuring full-fledged protection of human rights of IDPs.

As a matter of fact, today most of the first caseload of IDPs still reside in the administrative buildings to which they occupied back in the 1990s. The conditions they live in cannot be qualified as “dignified.” The violation of the right to adequate standard of living is closely linked the physical and mental well-being of IDPs. As rightly pointed out by Nana Sharia, bad maintenance of housing triggers health problems and leads to the question of raising a new generation of particularly vulnerable social group. The photos taken during my field trip to Tbilisi demonstrate that adequate standards of living are not met in the collective centres where IDPs reside since 1990s:



Hotel Kavkazia, Tbilisi, Georgia. The building turned into a collective centre in 1990s.
In many flats windows are either broken or non-existing. Some floors lack kitchens.



Another administrative building turned into a collective centre in 1990, Tbilisi, Georgia

Critical living conditions of IDPs residing in collective centres demonstrate that a temporary solution is not efficient to tackle protracted situation and dignified shelter should be considered as a priority.

Despite the rhetoric pertaining to the restoration of the territorial integrity and safe return of IDPs, integration should be understood as an inherent part of ensuring dignified conditions for the displaced population. According to the interviewed experts, the view enshrined in the State Strategy 2007, that integration and safe return are not mutually exclusive notions¹²⁶ should become one of the key lessons Ukraine takes away from the experiences of IDPs in Georgia. This lesson can be applied not only for housing issue but to various policy areas.

¹²⁶ Georgia, “On Approving of the State Strategy for Internally Displaced Persons – Persecuted”(2007) Decree 47 of the Government of Georgia

Shift from status-based to needs-based approach

The next recommendation for Ukrainian policy-makers, which was expressed by all the interviewed experts, was the necessity to shift from the status-based to needs-based approach while designing targeted programs for IDPs. In the Georgian case, where a significant number of IDPs still consider IDP allowance the only or one of the major sources of income despite the passage of 20 years, syndrome of social dependence on assistance¹²⁷ has clearly become an issue that needs to be addressed.

While during the first years of displacement, the focus of international organizations such as ICRC, Oxfam, DRC, NRC, and IRC was on distribution of humanitarian aid (reference, Nana), it has clearly become evident that durable solutions instead of emergency measures are required to address economic vulnerability of IDPs. In the beginning of the 2000s, in light of the absence of the elaborated state vision on IDPs, international organisations started to exit Georgia. With the partial loss of donor's attention, international funding for IDP-targeted programs has become limited which emphasized the necessity to switch to a developmental and pro-active approach in providing help to IDPs.¹²⁸

As revealed in the State Strategy 2007, since 1999, the approach towards IDPs started to change with *“the aim that humanitarian assistance should be gradually replaced by development and other programs focused on self-reliance”*.¹²⁹

The key principle of the new approach is to give a fishnet instead of fish. In practical terms, this vision has translated into programs aimed to enhance professional skills of IDPs and their social networks to enable them to enter the labour market. The State Strategy 2007 and National Action Plans that followed the adoption of the Strategy envisaged various

¹²⁷ Georgia, ‘On Approving of the State Strategy for Internally Displaced Persons – Persecuted’ (2007) Decree 47 of the Government of Georgia, art 1.6

¹²⁸ Nana Sharia, personal interview, March 2016

¹²⁹ Georgia ‘On Approving of the State Strategy for Internally Displaced Persons – Persecuted’ (2007) Decree 47 of the Government of Georgia, chapter I

programs of vocational education for IDPs,¹³⁰ credit loans programs and other targeted programs.

According to the experts, one of the most important steps to make these programs efficient is to conduct a thorough needs assessment of IDPs and their social vulnerability (ref). The ultimate purpose of needs assessment is to develop tailor-made programs for different vulnerable groups based on categorization criteria (SS, Principles, 1.7). In Georgia this is achieved by score-based system of social vulnerability at the state level. As previously explained, in accordance with the IDP Law 2014, Georgian IDPs can choose the scheme of social benefits they would like to receive: IDP allowance or social vulnerability allowance. In case of the second option, visits by social agents are supposed to determine if you qualify for the social support which is 60 Georgian Lari for a head of a family.¹³¹

After two years of displacement, Ukrainian NGOs also report a gradual decrease of humanitarian support from international donors with the focus of assistance shifting to social empowerment of IDPs. Individual Assistance Program (IPA) funded by UNHCR serves as an example of one of these initiatives.¹³²

As pointed out by Georgian experts, in a long run, and in the situation of protracted displacement it is vital to develop the strategy to de-link the IDP status from the question of social assistance¹³³ and base targeted programs on the social vulnerability criteria. This phased approach is justified both from the economic standpoint when the situation in the country remains dire and international funding becomes more limited and from the point of view of addressing dependence on assistance.

The aforementioned considerations, as well as overall Georgian experience on needs-based assistance of IDPs should be used by Ukrainian policy-makers, in particular with the

¹³⁰ Georgia, 'On Approving of the State Strategy for Internally Displaced Persons – Persecuted' (2007) Decree 47 of the Government of Georgia, Chapter V SS 3.3.

¹³¹ Tamuna Tsivtsivadse, personal interview, March 2016

¹³² Consultations with CrimeaSOS experts, October 2016

¹³³ Experts interviews, Tbilisi, Georgia, March 2016

regard to development of the National Action Plan for the implementation of the *State Targeted Program for Peace-Building in the Eastern Regions of Ukraine 2017-2020* which, inter alia, envisages social and economic adaptation of IDPs in post-displacement and post-conflict settings.¹³⁴

Integration of human rights of IDPs into peace-building through public diplomacy

The majority of the interviewed experts (3 out of 5) referred to public diplomacy as an important tool for positive changes in peace-building and enhancement of IDPs' rights, which Ukrainian policy-makers should be encouraged to use. The human dimension of the conflict must be incorporated into peace-building strategies of the state and the Government has to fulfil its positive obligation to ensure rights of its citizens.

Pertaining to the question of the safe return of IDPs, the Government of Georgia has expressed its commitment to conduct negotiations with the parties involved in the conflict. As envisaged in the State Strategy 2007, *"the objective of diplomatic pressure is that the self-declared authorities fulfil their obligations in reference to the safe and dignified return of IDPs."*¹³⁵

In the Ukrainian case, public diplomacy in regard to the topic of safe return of IDPs to the NGCAs as well as any other negotiations with *de facto* authorities of Donbas pertaining to the enhancement of the human rights regime on NGCAs is practically absent. Existing peace-building strategies do not focus on the topic of the safe return of IDPs. For instance, the package of measures for the implementation of the *Minsk Agreement II* does not include the provision on the safe return enshrined in the UN Guiding Principle 28 on ID guaranteeing the *"right to return voluntarily, in safety and with dignity."*¹³⁶

¹³⁴ Ukraine, 'State Targeted Program for Peace-Building in the Eastern Regions of Ukraine 2017-2020' (2016), Cabinet of Ministers of Ukraine

¹³⁵ Georgia, 'On Approving of the State Strategy for Internally Displaced Persons – Persecuted' (2007) Decree 47 of the Government of Georgia, Chapter IV, Article 1

¹³⁶ 'Guiding Principles On Internal Displacement Submitted By Francis Deng, Special Representative Of The Secretary-General To The UN Commission On Human Rights' (1998) 10 International Journal of Refugee Law,

Non-political discussions in which regular citizens interact with each other, such as round tables for host communities and IDPs, cultural heritage preservation initiatives, summer camps for IDP children, play vital roles in reconciliation efforts.¹³⁷ These measures should be envisaged in the state policy on ID as a measure enhancing social adaptation and integration of IDPs. In Georgia, summer camps for children have proved to be especially successful in reducing tensions between host communities and IDPs.¹³⁸ As stipulated in the State Strategy 2007, *“People-to-people diplomacy also is important in order to support the restoration of trust among communities.”*¹³⁹

As experts argued, one of the key messages to be conveyed through public diplomacy and non-political discussions is inclusiveness of the State’s policy on ID portraying the image of “Georgia for everyone” where no particular group is side-lined.¹⁴⁰ On the contrary, Government should talk more about the IDP problem and need for IDPs’ integration to show that it is an important policy issue.¹⁴¹ This critique is relevant for the Ukrainian context where there is a tendency among IDPs to be unwilling to disclose their status because of the fear of persecution which means that further work is required to ensure non-discriminatory political narrative.

Enhancing participation of IDPs in policy-making

Consultation of the IDPs communities and their engagement into the ID policy-making process is critical to the effectiveness of the national response to ID.¹⁴² Power of IDPs to influence political and economic decisions and policies that have direct impact on their lives should be secured through systematic support of the IDPs participation in the

Principle 28

¹³⁷ Tamuna Tsivtsivadse, personal interview, March 2016

¹³⁸ Maria Pochkhua, personal interview, March 2016

¹³⁹ Georgia, ‘On Approving of the State Strategy for Internally Displaced Persons – Persecuted’ (2007) Decree 47 of the Government of Georgia

¹⁴⁰ Ibid

¹⁴¹ Nana Sharia, personal interview, March 2016

¹⁴² Walter Kälin, *Addressing Internal Displacement: A Framework for National Responsibility* (The Brookings Institution - University of Bern Project on Internal Displacement 2005).

society. Putting it in simple words, nobody could know better the needs of IDPs than IDPs themselves, which means that tailor-made programs addressing IDP needs should be designed with active engagement of their beneficiaries.¹⁴³

Georgian State Strategy 2007 sets “*support of the IDPs participation in the society*” as one of the major goals of the state policy.¹⁴⁴ All interviewed experts, have emphasized the necessity to include IDP in decision-making process, create IDP active groups, and promote their engagement in the work of the IDP ministry. Given the particular vulnerability of IDPs and their underrepresentation in political and social life, some experts have stressed the necessity of advocating for a quota system for IDPs in Parliament and other sectors. Currently, both in Georgia and Ukraine quota systems for IDPs only exist in the domain of education.¹⁴⁵ IDP mainstreaming and positive discrimination of IDPs for the purpose of achieving substantial equality should be applied in all sectors.

The analysis of the Georgian NGOs dealing with ID demonstrates that the majority of them have emerged as civil society projects initiated by the IDPs themselves as a response to the conflict. Most of the IDP NGOs were created by IDPs and are being run by the IDPs (e.g. SPF, CHCA, Women’s IDP Initiative “Consent”, etc.,).

The situation in Ukraine resembles Georgia. Leading Ukrainian IDP NGOs (e.g. VostokSOS, DonbasSOS, CrimeaSOS) tend to hire IDPs in their working teams. In this respect, strengthening of civil society in both countries works in line with the promotion of the IDPs interests. Participation in civil society plays an important channel for IDPs in lobbying for the protection of their rights. That is why enabling civil society to have an advisory opinion during voting in the Parliament in Georgia¹⁴⁶ can be taken as an important good practice for Ukraine to enhance influence of IDP on decision-making.

¹⁴³ Ibid 20

¹⁴⁴ Georgia, ‘On Approving of the State Strategy for Internally Displaced Persons – Persecuted’(2007) Decree 47 of the Government of Georgia

¹⁴⁵ Consultations with Ukrainian and Georgian experts, October 2016

¹⁴⁶ Experts interview, Tbilisi, Georgia, March 2016

All interviewed experts emphasized the importance of the State Strategy as a conceptual and future-oriented framework which incorporates visionary approach of the government to the durable solutions with the regard to all the above-mentioned areas of concern.

3.3.2 Coordination as a Challenge for the IDP Policy Implementation

Creation of the IDP Ministry: pro's and con's in the Ukrainian and Georgian contexts

Creating a national institutional focal point for IDPs can be crucial to ensure durable solutions and facilitate coordination between governmental stakeholders and international partners.¹⁴⁷ While there are multiple institutional alternatives for focal points on ID, both Georgia and Ukraine opted for a special ministry to deal with the matters related to assistance and protection of IDPs.

During the interviews both pro's and con's of the Ministry as a coordination body were voiced. On the bright side, all the experts emphasized the important role of the ministry as a bridge between IDPs and governmental institutions, as well as the positive impact of the financial allocations in the state budget targeted for the newly created ministry.

As interviews were conducted in March 2016, when Ukraine did not have a specially designated Ministry yet, the general experts' recommendation coinciding with the opinion of the Ukrainian and international human rights defenders, was to advocate for the creation of the special ministry. Following advice of international community and pressure from the Ukrainian civil society, in April 2016 Ukrainian government responded with the establishment of the Ministry of Temporarily Occupied Territories and IDPs in Ukraine (MTOT).

At the same time, the interviews show that creation of the ministry has not been perceived by Georgian experts as a magic pill to solve all coordination issues pertaining to

¹⁴⁷ Walter Kälin, *Addressing Internal Displacement: A Framework for National Responsibility* (The Brookings Institution - University of Bern Project on Internal Displacement 2005) 18

IDPs. Considering the socio-economic situation in Georgia and existing structures, some experts expressed the view that there might be more efficient alternatives to the specially designated ministry. An example of an alternative could be a representative body (e.g. ombudsman) working on inclusion of IDPs matter in the work of all already existing ministries. This view is based on two main assumptions. First, MRA, as a new entity, required additional capacity-building to enhance its technical and structural competence and, therefore, could not provide a timely response for such an emergency matter issue as ID. Second, given the dire economic situation in the country, MRA might not have been the most cost-effective measure as it required budget allocation for salaries of the MRA staff and rent of premises, etc. This cost-effectiveness argument may be also applicable for Ukraine, where financial resources are very much limited in the light of ongoing crisis in which the economic situation is so drastic that all Ukrainian citizens (including the retired population) are forced to pay a war tax of 3 % from their monthly income to support Government in expenses related to the armed conflict in Donbass.

Another critique raised by experts was that having a ministry makes it more difficult to ensure that local governments feel responsible for the assistance of IDPs on the ground.¹⁴⁸ One of the suggested ways to address this shortcoming is to ensure that the IDP issue is mainstreaming into all existing programs of all the ministries. This takeaway is particularly useful for Ukraine at the stage when the work of MTOT has just started and in the process of developing strategy for the efficient delivery on the targeted goals is ongoing.

Coordination challenges: fostering efficiency of the IDP Ministry

The experts elaborated on the challenges faced by the MRA and expressed their views on how to address two key difficulties in coordination: 1) duplication of functions of various ministries engaged in the response to ID and 2) low outreach of the specialized ministry to the

¹⁴⁸ Nana Sharia, personal interview, March 2016

regions where its services are most needed. Both challenges are relevant for the work of the newly created MTOT.

Assigning responsibilities: duplication of functions of the ID focal point with other state agencies dealing with ID

At the outset of the displacement crisis in Georgia the *Labor and Social Affairs Ministry* was tasked to deal with the IDP issues in Georgia. Only later, the *Ministry of Refugees and Accommodation (MRA)*, created as an actor for donors and communications, took the lead in all IDP-related matters. In a similar way, the Ministry of Temporarily Occupied Territories and IDPs Ukraine took over the responsibilities of the Ministry of Social Policy in Ukraine.

Logically, both situations require special attention be paid to avoiding the duplication of functions between the ministries initially in charge of IDP matters with the newly designated IDP body. In Georgia this challenge was overcome by emphasis on the leading role of MRA in all IDP-related matters and its supervisory function. As envisaged in the State Strategy 2007, “*The leading role, responsibility and coordination function in the elaboration of programs and monitoring outcomes of their implementation is assigned to the Ministry of Refugees and Accommodation, which will closely cooperate with the thematic working groups through the Secretariat of the State Commission.*”¹⁴⁹

This approach of assigning the leading role in response to displacement to MRA contrasts with the tasks of MTOT in Ukraine envisaged in the *CoM Resolution 376* which are more of the participatory rather than supervisory nature. The Resolution defines key tasks of the new Ministry which includes participation in the formulation and implementation of the state policy on the protection of rights and freedoms violated as a result of a temporarily

¹⁴⁹ Georgia, ‘On Approving of the State Strategy for Internally Displaced Persons – Persecuted’ (2007) Decree 47 of the Government of Georgia, art 1.3

occupation of some parts of Ukraine.¹⁵⁰ The resolution does not assign a leading and coordinating role to the new ministry in tackling internal displacement crisis, but rather outlines its participatory role in formulation and implementation of the state policy on IDPs.

In MRA's case, coordination of the government's response on internal displacement presupposes detection of the duplication of functions. Furthermore, given the leading role of MRA in tackling displacement, it is generally understood that services to IDPs, such as granting IDP status, distribution of IDP allowance, and maintaining IDP database are provided by MRA and not any other state agency.¹⁵¹

In the case of MTOT in Ukraine, the Ministry still needs to gain this authority, as there is an unaddressed lack of emphasis on the leading role of the Ministry on ID. Partially it may be explained by the nature of the Ministry itself which is designated as an authority to regulate matters related to the temporarily occupied territories (TOT) *and* IDPs. This dual function and prior focus of the Ministry on the restoration of the Donbass region and Crimea slightly steals the attention away from the protection of IDPs.

In practice, the Ministry of Social Policy remains to be the first referral point for IDPs when it comes to provision of services. The recent introduction of the unified IDP database in Ukraine is a good illustration of this issue. Despite the fact that MTOT has already been in place when the IDP database was launched in September 2016, Ministry of Social Policy of Ukraine, not MTOT, was assigned as the managing authority for the registry. MTOT will also have access to the database, but will not take a lead in such an important aspect of ID services as registration. In Georgia, the IDP database was created by the MRA in cooperation with the UNHCR.¹⁵² While designated as the focal point for IDPs, in practice MTOT does not

¹⁵⁰ Ukraine, 'CoM Resolution 376' (2016) Cabinet of Ministers of Ukraine
<<http://www.kmu.gov.ua/control/uk/cardnpd?docid=249142517>> accessed 26 October (Ukrainian)

¹⁵¹ World Bank, 'Georgia Transitioning from Status to Needs Based Assistance for IDPs' (2015) Report No: ACS16557 <<http://elibrary.worldbank.org/doi/abs/10.1596/24412>> accessed 26 October 2016

¹⁵² Tamuna Tsivtsivadse, personal interview, March 2016

represent the leading authority on ID as many of its functions are still being performed by the Ministry of Social Policy or together with the Ministry of Social Policy. This leads to the confusion and lack of clear understanding among beneficiaries of the IDP-targeted programs as for the exact forum where they should seek remedies.

For the sake of efficiency of coordination, further work is required to ensure that MTOT takes the lead in this process by gradual transition of all IDP services to the MTOT's supervision.

Need in decentralization to ensure that voices of IDPs are heard on a regional level

The second coordination challenge pointed out by the interviewed experts is insufficient regional representation of the specialized ministry and need of decentralization reforms. In the Georgian case, the MRA is headquartered in Tbilisi and has four regional branches.¹⁵³ Regional representation of the ministry is crucial, as it guarantees IDPs a possibility to seek local assistance with daily vital matters, such as IDP allowance, emergency aid, employment search, and housing needs.¹⁵⁴

Despite the presence of the MRA regional branches, there is still a tendency to central decision making in Tbilisi not reflecting the real state of IDP needs on a local level which undermines the work of the MRA branches and makes it isolated.¹⁵⁵

Experts argued that both Georgian and Ukrainian policy-makers should work on the decentralization of the Ministry. This means that regular meetings of the focal point representatives in the regions should be conducted not only in Tbilisi and Kiev.¹⁵⁶ The decentralization reform is a particularly acute issue for the Ukrainian context, because as of today, there have been no state budget allocations to ensure existence of the regional offices of MTOT envisaged in the CoM Resolution 376. Given the fact that the predominant majority

¹⁵³ World Bank, 'Georgia Transitioning from Status to Needs Based Assistance for IDPs' (2015) Report No: ACS16557 <<http://elibrary.worldbank.org/doi/abs/10.1596/24412>> accessed 26 October 2016

¹⁵⁴ Ibid 17

¹⁵⁵ Ibid 18

¹⁵⁶ Tamuna Tsivtsivadse, personal interview, March 2016

of IDPs tend to relocate to the neighbouring to Donbass regions, regional representation in those affected oblasts ¹⁵⁷ has to be a top priority in the MTOT's agenda. Thus, further advocacy efforts are required to urge the Government to budget for its commitments under the CoM Resolution 376.

Strong government as a prerequisite for the successful ID policy implementation

When all institutional and structural issues are solved, the next important step is setting a proper modality for the coordination of the ID policy with regard to international aid contributions. ¹⁵⁸With many humanitarian agencies and international organisations rushing into countries after the outbreak of ID as a result of war and humanitarian crisis, there is a potential threat of IDP policy becoming dependent on international donors' funding and, consequently, being donor-driven in general. Acceptance of the support from the international community while budgeting for the response to ID is envisaged both in the *State Strategy in Georgia* and in *Plan of the Ministry of temporarily occupied territories and internally displaced persons Ukraine for the budget periods until 2020*.¹⁵⁹

During the times of economic stagnation, availability of international funding has obviously a positive impact on the realization of the IDP-targeted programs. However, extensive reliance on external funding may potentially lead to weakening of the role of the State in tackling ID with international donors taking lead in the ID decision-making.

Drawing upon the experience of 2008 and the role of international aid in the IDPs' assistance, Georgian experts stress the necessity of ensuring that state ID policy is not donor-driven.¹⁶⁰ While donors may come and go, the government needs to ensure its capacity to be the leading authority to influence the ID-policy with the support of international community

¹⁵⁷ Oblast is an administrative district in Ukraine

¹⁵⁸ Tamuna Tsivtsivadse, personal interview, March 2016

¹⁵⁹ Ukraine, 'Ministry of temporarily occupied territories and internally displaced persons Ukraine for the budget periods until 2020' Ministry of TOT Action plan <<http://mtot.gov.ua/category/pro-ministerstvo/>> accessed 10 November 2016

¹⁶⁰ Tamuna Tsivtsivadse, personal interview, March 2016

but not under its supervision. For the sake of its effectiveness and sustainability, ID policy-making and its implementation should not be donor-driven, but should be led by strong “hands on” government.¹⁶¹

This takeaway is critical for the Ukrainian context in light of the adoption of the aforementioned *State-targeted program for peace support and renewal in the Eastern regions* budgeted for above 1.5 mln USD, most of which will be covered by the contributions from international technical assistance donors.¹⁶²

Conclusions

The chapter provides an overview of issues that have emerged in the development of a normative response to internal displacement in Ukraine, and the challenges inherent in implementing the regulatory framework that was set up at the onset of the crisis. It identifies the following areas as problematic within the Ukrainian context: IDPs’ registration and the granting of a legal status for them on NGCAs; civil registration and the issuance of documents to establish facts of birth and death on the NGCAs; impeded access to voting; effective and non-discriminatory access to social benefits and pensions.

The evolvement of the Georgian legal framework on ID demonstrates how important legislative changes aimed to ensure inclusive granting of IDP status non-discriminatory access to social benefits can be achieved through strategic litigation, judicial activism, and active participation of the civil society in the decision-making process. The chapter also demonstrates the importance of focus on forward-looking policies, necessity to enhance IDPs’ participation in the decision-making, and need to address root causes of the displacement through policy interventions. Eventually, the chapter lays out the foundation for the recommendations presented in general conclusions.

¹⁶¹ Ibid

¹⁶² Ukraine, ‘State Targeted Program for Peace-Building in the Eastern Regions of Ukraine 2017-2020’ (2016), Cabinet of Ministers of Ukraine

General conclusions

The present research reveals that despite positive legislative developments addressing existing legal gaps in the Ukrainian normative framework, further work is required to ensure its full compliance with international legal standards on internal displacement. The legal analysis of the Ukrainian IDP Law and enacted amendments to it do not fully eliminate all the challenges faced by the IDPs, especially in the most problematic areas. This is seen in IDP's registration and the granting of a legal status for them; civil registration and the issuance of documents; and non-discriminatory access to social benefits. Analysis of the legislative measures taken by Georgia to address similar concerns shows that a number of legislative initiatives may be needed in Ukraine to ensure IDPs' equality before law and non-discriminatory access to social benefits:

- De-linking access to social benefits from the recognition of status as an IDP by amending or revoking the relevant regulations issued by the cabinet of ministers
- Introducing amendments to the law on civil status registration to ensure that IDPs living in NGCAs have access to the administrative procedures for the issuing of birth, marriage and death certificates, and to guarantee that they do not discriminate against unregistered IDPs
- Elimination of legal provisions that require IDPs to cross the contact line in order to obtain or renew their documents
- Introduction of necessary amendments to enable the IDPs vote in the parliamentary and local elections

This study goes beyond the pure legalistic perspective and includes analysis of the experts' interviews and analysing lessons learnt in Georgia. By doing so it presents a policy approach on how to enhance protection programs for IDPs in Ukraine. The policy-oriented

part of research reveals the importance of ensuring durable solutions and efficient coordination of work of the IDP focal point. The study suggests that considerations voiced by Georgian experts encouraging forward-looking approach to displacement, enhanced participation of IDPs in decision-making, and shift to needs-based approach in targeted assistance programs are applicable for the Ukrainian context and should be taken into account while designing policies affecting IDPs. Findings presented in this study may serve as guidelines for law and policy-makers, as well as human rights advocates working on response to internal displacement in Ukraine

Appendix A

List of the interviewed experts

Tbilisi, Georgia

March 2016

1. Maria Pochkhua, Co-founder, Member of the Board, IDP Women Association “Consent”, former Deputy Head of IDP Department in the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia
2. Tamuna Tsivtsivadse, Senior Programme Officer, Swiss Cooperation for the South Caucasus
3. Nana Sharia, Program Manager, Charity Humanitarian Centre Abkhazeti
4. Irakli Bokuchava, Chairman, Social Programs Foundation, Information, Counseling and Legal Assistance for IDPs
5. Nona Kurdovanidze, Coordinator of Legal Aid Centre, Georgian Young Lawyers Association

Appendix B

Interview Questionnaire¹⁶³

- How does the normative framework of Georgia respond to the challenges faced by IDPs? Please focus on the issues related to the right to equal treatment before the law and right to social security
- What are the potential shortcomings of the existing normative framework in Georgia in addressing the issue of discriminatory treatment faced by IDPs?
- Drawing upon Georgian experience, what kind of amendments can be or were suggested to address potential gaps in response in the identified problematic areas?
- What are best practices and lessons learnt in designing laws and policies on the internal displacement in Georgia which can be applicable for the Ukrainian context?

The interviewees were asked to focus in their answers on the following thematic areas:

- Access to documentation (avenues for issuance/replacement of lost/destroyed documentation; institutional effectiveness; challenges to the obtainment of documentation)
- Registration and data collection (provisions requiring systematic registration; mechanisms in place; potential obstacles to registration)
- Structures of governance (institutional focal point, cooperation between different governmental institutions; existing coordination mechanisms; coordination gaps)
- Allocation of adequate resources (sources of funding for IDP response; envisaged oversight mechanisms; challenges in ensuring adequate funding)

¹⁶³ The questionnaire was developed during my study visit to IDMC under supervision of IDMC experts

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