

MASTERTHESIS

Titel der Master Thesis / Title of the Master's Thesis

„Legal Bases of Protection Responses to Internally
Displaced Persons and Internal Displacement in Ukraine“

verfasst von / submitted by

Iryna Aleksieieva

angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of
Master of Laws (LL.M.)

Wien, 2016 / Vienna 2016

Studienkennzahl lt. Studienblatt /
Postgraduate programme code as it
appears on
the student record sheet:

A 992 628

Universitätslehrgang lt. Studienblatt /
Postgraduate programme as it appears on
the student record sheet:

International Legal Studies

Betreut von / Supervisor:

Univ.-Prof. Dr. Manfred Nowak

Table of contents

1. Introduction	1
2. Internally displaced persons (IDPs) and their protection.....	5
A. The significance of internal displacement.....	5
B. Defining IDPs	6
1. Who are IDPs?	6
2. IDPs v. refugees.....	7
C. Impact of internal displacement.....	9
1. Protection risks caused by internal displacement	9
2. Specific needs of internally displaced women and children.....	10
D. Protection of IDPs	11
1. What is protection?.....	11
2. Who protects IDPs?.....	12
(a) International responses and the Guiding Principles	12
(b) A state's responsibility towards IDPs	14
(c) National and regional responses.....	16
3. Approaches towards the protection of IDPs	17
3. The law applicable to situations of internal displacement.....	20
A. International human rights law	20
B. International humanitarian law.....	22
C. Protection under the Guiding Principles	23
1. General principles.....	24
2. Protection from arbitrary displacement.....	25
3. Protection during displacement	26
(a) Movement-related rights	26
(b) Protection of family life	27
(c) Documentation of IDPs.....	27
(d) Other rights enjoyed by IDPs during displacement	28
4. Humanitarian assistance during displacement	29
5. Protection after displacement.....	29
(a) Return, Resettlement and Reintegration	29
i) The three durable solutions	29
ii) Is there a durable solution in case of protracted displacement?.....	30

(b) Property restitution and compensation.....	32
6. <i>The future of the Guiding Principles</i>	33
4. United Nations institutional framework for protection and assistance to IDPs	35
<i>A. The Special Rapporteur on the Human Rights of IDPs.....</i>	<i>35</i>
B. Collaborative response to IDPs	37
1. Cluster approach	39
2. UNHCR and the centrality of protection.....	39
3. Country-level coordination	41
5. National response towards IDPs in Ukraine	43
A. Overview of displacement in Ukraine	43
1. Factual background.....	43
2. Humanitarian response	43
3. International monitoring	45
B. Assessment of national legal framework against international standards.....	45
1. Freedom of movement	46
2. Humanitarian assistance and access to basic services	48
3. Economic and social rights	50
(a) Official IDPs registration in Ukraine	50
(b) The definition of IDPs under the Ukrainian IDP Law	51
(c) Eligibility to social entitlements.....	53
i) Social assistance and pension payments	53
ii) Access to assistance for children	55
(d) Basic shelter and adequate housing	56
(e) Property and possession	57
4. National focal point responsible for IDP	59
6. Conclusion	62
7. Bibliography.....	66
8. Abstract	76

Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
FAO	Food and Agriculture Organization of the United Nations
GCA	Government Controlled Areas
GP	GP UN Guiding Principles on Internal Displacement
GPC	Global Protection Cluster
IASC	IASC Inter-Agency Standing Committee
ICESCR	International Covenant of Economic, Social and Cultural Rights
IICPR	International Covenant on Civil and Political Rights
ICRC	ICRC International Committee of the Red Cross
IDP	IDP Internally Displaced Person
NGCA	Non-government Controlled Areas
NGO	NGO Non-Governmental Organisation
OCHA	OCHA UN Office for the Coordination of Humanitarian Affairs
OHCHR	UN Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
WFP	United Nations World Food Programme

1. Introduction

During the years 2014-2015 of spiralling crises, the global number of internally displaced persons or 'IDPs' has accelerated rapidly and reached 40,8 million people as of 31 December 2015.¹ This is unprecedented since 1989, the first year for which global statistics on IDPs are available. For the most part displacements are associated with conflict, violence, and disasters. In 2015, there were new 27,8 million internally displaced who fled their homes, including 19,2 million in 113 countries worldwide as a result of disasters and 8,6 million in 28 countries as a result of armed conflicts. As an example, the ongoing crisis in eastern Ukraine that is fuelled by an armed conflict between the separatist forces of the self-declared Donetsk and Lugansk People's Republics, and the Ukrainian government, remain the cause for suffering and massive displacement of 1,7 million people that has brought Ukraine to take the fourth position on the number of new displacements in 2015.²

Such situation poses challenges to finding adequate response to populations of concern. Unlike refugees, the internally displaced have not left the country whose citizens they normally are. As such, IDPs are part of the broader civilian population that remain entitled to the same rights that all other persons in their country enjoy. Forced from their homes, however, IDPs have special needs by virtue of their exposure to specific forms of deprivation, such as loss of shelter, and protection risks. These risks may include: armed attack and abuse while fleeing in search of safety; family separation; heightened risk of sexual and gender-based violence; arbitrary deprivation of land, homes and other property; and displacement into inhospitable environments.

The prevention of displacement and the protection of IDPs within their own country are the responsibility of national authorities. This is the crucial concept of 'sovereignty as responsibility' developed to defend IDPs' rights. However, in situations of armed conflict, IDPs may find themselves in territories over which state authority is absent or difficult to enforce. Alternatively, national protection is not ensured where IDPs are let down by the same national authorities that are supposed to protect them. This is the case where the sovereignty concept is abused by officials of states which have defaulted on their obligations to their citizens. In such situations, a critical protection role falls to the international community.

In this respect it is worth to mention that, at present, unlike refugees, IDPs do not have a specific designated United Nations (UN) unit to help them with their plight except for an *ad hoc* discretionary position of the Representative of the UN Secretary-General on IDPs that was

¹ Internal Displacement Monitoring Centre of the Norwegian Refugee Council, *Global Report on Internal Displacement 2016*, available online at <http://www.internal-displacement.org/globalreport2016/> (last visited 26 June 2016).

²*Ibid.*

established in 1992 (currently – the Special Rapporteur on the Human Rights of IDPs). What is more, the principle of state sovereignty limits the ability of the international community to provide IDPs with assistance and protection. This has led to institutional gaps in international law when it comes to the protection of IDPs, and constitutes a protection gap.

In order to address this gap and in view of the mounting crisis of internal displacement, the Representative to the UN Secretary-General on Internal Displacement opted for a collaborative approach to deal with the problem of internal displacement within UN. It draws upon the mandates and expertise of UN humanitarian and development agencies led by the UN High Commissioner for Refugees (UNHCR) whose role is to oversee the protection and shelter needs of IDPs as well as coordinate and manage camps.

To make the collaborative approach more effective, the Inter-Agency Standing Committee (IASC) was created as the coordination mechanism for UN humanitarian organizations. It initiated the reform of the humanitarian system and, in 2005, framed institutional mechanisms known as the ‘cluster approach’ to help fill the institutional gap. It identified clearly mandated lead agencies – UN agencies, international organizations, the International Red Cross and Red Crescent Movement and non-governmental organizations (NGOs) - whose efforts can be coordinated and partnership can be strengthened to address humanitarian crises. Nevertheless, the situation on the ground has proved that the challenge the international community is facing today remains to bridge the gaps that do exist in rights and needs the IDPs may have and strengthen the protection of IDPs in armed conflict.

Another point of concern regarding IDPs is that the activities of the local governments and international community involved in handling situations of internal displacement shall respect the main bases of human rights protection. In this connection, the fundamental question relating to the protection of IDPs is by what instruments the IDPs are legally protected? Bearing in mind the concept of sovereignty as responsibility the answer is that the primary legal framework is national. However, it is not less important that national laws should also take into account the state's international legal obligations. For this purpose, the Guiding Principles on Internal Displacement (Guiding Principles)³ were developed under the mandate of the Representative to the UN Secretary-General on IDPs.

Their formulation in 1998 was a significant milestone in the evolution of the universal normative framework with respect to the protection of and assistance to IDPs. Prior to the elaboration of these principles, protection and assistance of IDPs was examined within the prism of domestic laws. The Guiding Principles are now the most authoritative international normative

³UN Commission on Human Rights, *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.1, 11 February 1998, para. 2 of Introduction, available online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement> (last visited 23 June 2016).

standards on internal displacement. They have become the basis for domestic laws and policies in countries that faced with the problem of internal displacement. Some governments simply endorsed them. UN humanitarian organizations and regional organizations have also adopted them and used them during their operations in the field.

Without purporting to create new obligations, the Guiding Principles restate existing rights and freedoms provided for in binding international instruments as well as in customary international law. In that way the Guiding Principles identify the extent to which national sovereignty actually entails clear, existing responsibilities to respond to the needs of IDPs. The Guiding Principles are based on international humanitarian law, human rights law, and refugee law by analogy, but they are not binding upon states. It opens the door for states to raise questions challenging their legal status and emphasise on the primary role of the state in providing protection to IDPs. In practice, it generates flaws of IDP's national legal framework in so far as the governments adopt and apply laws that are not in compliance with the Guiding Principles and international law accordingly. For instance, some states have introduced registration procedure for IDPs as 'status determination' condition instead of registering internally displaced simply as recipients of specific humanitarian benefits. In the outcome, it hampers the identification procedure for IDPs and raises significant protection concerns, depriving IDPs of their rights under international human rights and humanitarian law.

For the reasons outlined above, internal displacement has been recognised as a problem affecting virtually every region of the world, including Ukraine nowadays because of war in Donbass. The necessity to address the needs of IDPs gives rise to legitimate international concerns around who and how protects them. The persistent lack of unified legally binding instruments regulating the protection and assistance of IDPs makes this area even more problematic. It is for this very purpose in my thesis I will endeavour to explore the main legal bases of protection responses to IDPs and to look into the situation in Ukraine in order to assess it from the standpoint of protection guaranteed by international law.

In particular, in my thesis I will explain how the subject of internal displacement relates to the principle of sovereignty. This thesis will show what legal rights IDPs are entitled to under the Guiding Principles. I will also analyse how the protection gap is filled up by international community in situations when state sovereignty compromises security and protection of IDPs. The thesis will describe national response towards IDPs in Ukraine. Finally, the thesis will answer the research question that is how far national laws and policies geared to address displacement in Ukraine, developed with the support of international organizations, offer solutions to the humanitarian and protection challenges faced by affected populations there. It will be questioned whether the needs of IDPs in Ukraine are adequately addressed.

The definition of IDPs is based on the working description of the Guiding Principles: ‘Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border’.⁴

Given the broad scope of the description, this thesis in its chapters 1-3 chooses to focus only on those internally displaced who have been forced to flee from armed conflict, situations of generalised violence, and violations of human rights. Those who have been internally displaced as a result of natural or human-made disasters are not considered in this thesis.

As regards the structure of this thesis, Chapter 1 provides definition of IDPs and their specific protection needs. It also explains who is responsible to protect IDPs, how both UN and national authorities can respond to forced displacement concerns, and what are key protection approaches as regards IDPs.

Chapter 2 describes international legal framework applicable to the protection of IDPs and explains how human rights law and humanitarian law collaborate and reinforce each other.

Chapter 3 turns on to the role of the international community – UN agencies and other actors involved in cluster approach - in providing protection and assistance to IDPs, when the national authorities lack the capacity or are unwilling to ensure an effective response to a humanitarian crisis.

Lastly, Chapter 4 elaborates on the Ukrainian national policy and protection framework for IDPs, identifying its key irregularities and their impact on the protection of IDPs fleeing the conflict in Donbass.

The research will draw on two key sources: 1) international human rights law and international humanitarian law, as reflected in the Guiding Principles, and 2) specific laws and policies enacted and implemented by national authorities, including the government of Ukraine. The analysis will also rely on statistics from government sources on IDPs, research studies and relevant theory. It will critically evaluate the factual situation on the ground, particularly in eastern part of Ukraine, paying due attention to the effects that the law has on social and economic life of IDPs there.

⁴Guiding Principles, *supra* note 3, Introduction, paragraph 2.

2. Internally displaced persons (IDPs) and their protection

A. The significance of internal displacement

Internal displacement has always existed and often takes place prior to external displacement which is seen as the last option. According to Erin D. Mooney ‘the reasons why internally displaced persons remain within their country are many, and vary from situation to situation and individual to individual.’ Indeed, in situations of danger, people generally prefer to stay within their own community or at least within their own country, close to their homes, envisaging return. Uprooted persons may be unable to reach border areas safely. Sometimes, people are not able to leave the country because they have limited means of transportation. ‘Geographical obstacles such as mountains and rivers or factors such as age, disability, and health may impede their transit.’⁵ Moreover, external displacement may not be an option, because when population movements spill over into neighbouring countries, some countries close their borders. Finally, people may be denied freedom of movement by their own government.

Although internal displacement is not a new phenomenon, it reached dramatic dimensions after the Cold War. Forced displacement has been on the rise since at least the mid-1990s in most regions, but over the past five years the rate has increased and stood at approximately 40,8 million by the end of 2015. As the UNHCR’s statistics indicated this is the fifth year in a row that the global number of IDPs has increased, ‘largely driven by the persistent violence and conflict in the Middle east, with Yemen, the Syrian Arab Republic, and Iraq accounting for more than half of all new internal displacements... Yemen dominated the statistics on newly internally displaced individuals in 2015. Renewed and escalated conflict in the country displaced over 2,5 million individuals, nearly 10 per cent of the country’s population, within one year. Other countries that reported large numbers of new IDPs included Iraq (808,700), Ukraine (800,000), Sudan (639,500), the Democratic Republic of the Congo (637,900), and Afghanistan (492,600). These six countries combined accounted for 84 per cent of all new IDPs during 2015.’⁶

Colombia, that has been locked in civil war for more than half a century, had the world’s largest internally displaced population of 6,9 million at the end of 2015. The estimated total number of IDPs in the Syrian Arab Republic declined from 7.6 million in 2014 to 6.6 million in 2015, partly due to some displaced people crossing international borders to seek protection outside the country. The Syrian Arab Republic therefore had the second largest IDP population. More than five years of civil war and armed conflict in the country have directly contributed to

⁵Erin D. Mooney, ‘Towards a Protection Regime for Internally Displaced Persons’, in Edward Newman and Joanne van Selm (eds.), *Refugees and Forced Displacement: International Security, Human Vulnerability, and the State*, (United Nations University Press, 2003), 159, at 159.

⁶UNHCR, *UNHCR Global Trends: Forced Displacement in 2015*, at 29-30, available online at <http://www.unhcr.org/576408cd7> (last visited 29 June 2016).

one of the largest displacement crises in recent history. Other countries with the leading numbers on IDPs by the end of 2015 remained Iraq, Sudan and Nigeria.⁷

UNHCR Global Trends Report for 2015 highlights that ‘the reasons for such unpleasant developments with IDPs’ statistics are threefold: 1) conflicts that cause large population outflows, like Colombia and Syria, are lasting longer; 2) dramatic new or reignited conflicts and situations of insecurity are occurring more frequently. While today’s largest is Syria, wars have broken out in the past five years in South Sudan, Yemen, Burundi, Ukraine and Central African Republic, while thousands more people have fled raging gang and other violence in Central America; 3) the rate at which solutions are being found for IDPs has been on a falling trend since the end of the Cold War, leaving a growing number in limbo.’⁸

The aforesaid related considerations have driven a development that concern for the welfare of IDPs has grown steadily. In many situations, the internally displaced are confronted with serious and persistent threats to their well-being. A large proportion of the world’s IDPs have been displaced for protracted periods of time and do not have an early prospect of finding a solution. While their vulnerability to such threats is by no means unique, and while the dynamics and consequences of displacement vary considerably from one country to another, there is considerable evidence to suggest that IDPs experience specific forms of loss and require particular efforts to address and resolve their plight.

B. Defining IDPs

1. Who are IDPs?

Internally displaced persons are citizens or long-term residents of their country uprooted from their homes. The definition of IDPs most commonly used comes from the Guiding Principles. The Guiding Principles define IDPs as ‘persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border’.⁹

Involuntary departure and the fact that the individual remains within his/her country are the two defining elements of an IDP. The first element distinguishes IDPs from individuals who

⁷*Ibid.*

⁸ UNHCR, *Global Forced Displacement Hits Record High*, available online at <http://www.unhcr.org/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html> (last visited 29 June 2016).

⁹ Guiding Principles, *supra* note 3, Introduction, paragraph 2.

left their homes out of choice and could have otherwise safely remained where they lived.¹⁰ However, it is important to keep in mind that persons who did not leave might face similar risks as those who left but were simply unable to travel due to insecurity or other reasons. The second element explains why IDPs are not refugees. Refugees, by definition, are outside their country of nationality or habitual residence.¹¹ In other respects, however, both categories of displaced persons often face similar risks and deprivations.

The IDP's definition mentions some of the main causes of internal displacement, including armed conflict, violence, violations of human rights and disasters. This is not an exhaustive list; the phrase 'in particular' means that it does not exclude the possibility that other situations, like large scale development projects (construction of dams or development of roads), might meet the two key criteria of involuntary movement within one's country.¹²

'It is important to understand that the IDP definition is a descriptive definition rather than a legal definition. It simply describes the factual situation of a person being uprooted within the country of habitual residence. It does not confer a special legal status or rights in the same way that recognition as a refugee does. This is not necessary for IDPs because, unlike refugees who require a special legal status as result of being outside their country and without its protection, IDPs remain entitled to all the rights and guarantees as citizens and other habitual residents of a particular state.'¹³ Some countries do accord IDPs, or certain groups of IDPs, a status under national legislation. However, this does not affect the rights enjoyed by all IDPs under international human rights and humanitarian law.

2. IDPs v. refugees

Unlike refugees, IDPs have not crossed an internationally recognized border. IDPs remain inside their national borders and it is this that distinguishes them from refugees, who are no longer protected by their national state, but by international laws and obligations, as far as the bond between them and their state has been severed.

'In order to understand why IDPs were not included in the refugee definition, a good starting point is to analyse the history of this definition... The conceptualisation of the refugee problem upon which the definition in the 1951 Convention Relating to the Status of Refugees (Refugees Convention) is based is probably rooted in the political situation which prevailed at the end of the Second World War. The wording of the Refugees Convention may have been

¹⁰Global Protection Cluster Working Group, *Handbook for the Protection of Internally Displaced Persons*, at 8, available online at <http://www.unhcr.org/4c2355229.pdf> (last visited 30 June 2016).

¹¹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, UNTS, vol. 189, p. 137, Article 1(A)(2).

¹²Handbook for the Protection of IDPs, *supra* note 10, at 8.

¹³*Ibid.*

influenced by the events which had just occurred in Europe and resulted in the persecution and killing of millions of people, many of whom were targeted because of some attribute or aspect of their identity. The Refugees Convention reflects the political concerns of its drafters who were primarily Western European states and the United States. States belonging to the Communist bloc refused to participate in the drafting of the Refugees Convention and boycotted the vote. As a result, the definition focuses mainly on civil and political rights',¹⁴ as it established that a refugee is a person:

‘who as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.’¹⁵

The 1967 Protocol Relating to the Status of Refugees deleted the temporal and geographical limitations. The application of the Refugees Convention was no more restricted to persons fleeing events occurring in Europe before 1 January 1951.

It may be derived from the definition in the Refugees Convention that refugees can claim their status based on persecution or a well-founded fear of persecution for five reasons – race, religion, nationality, membership of a particular social group, or political opinion, while IDPs may be displaced because of generalized violence, violations of human rights and natural or human-made disasters. Thus, the IDP category is much broader than that of refugees, particularly as causes such as development-induced and environmental displacement are included.¹⁶

When the Refugees Convention was drafted, the problem of IDPs had not been included in its ambit due to the opposition of the United States, France and other states that argued that ‘IDPs raised problems of a different nature which should not be dealt with within the framework of the 1951 Convention...[It] was the responsibility of the states to deal with these problems which “should not be confused with the problem before the General Assembly, namely, the provision of protection for those outside their own countries, who lacked the protection of a government or who required asylum.”’¹⁷

‘Hathaway lists two other reasons for the exclusion of IDPs from the 1951

¹⁴Catherine Phuong, *The International Protection of Internally Displaced Persons*, (Cambridge University Press, 2004), at 16-17.

¹⁵ Refugees Convention, *supra* note 11, Article 1(A)(2).

¹⁶ Alex Mundt and Elizabeth Ferris, *Durable Solutions for IDPs in Protracted Situations: Three Case Studies*, Brookings-Bern Project on Internal Displacement, available online at http://reliefweb.int/sites/reliefweb.int/files/resources/A6BC6AB3389A639C492575130004ACEF-Full_Report.pdf (last visited 17 July 2016).

¹⁷Catherine Phuong, *supra* note 14, at 23-24.

definition.¹⁸First, states should not address the problem of IDPs by extending the refugee definition to seek to include the internally displaced because it remains the primary duty of the state to protect its own population. Secondly, it would constitute a violation of national sovereignty as the problems raised by IDPs are invariably part of the internal affairs of the state. In contrast, the refugee is situated within the reach of the international community. It seems that the historical importance of the border-crossing element is imposed by what remain the cardinal principles of international law, namely state sovereignty, and the closely related principles of territorial integrity and non-intervention.¹⁹

The studies conducted by Brookings-Bern Project on Internal Displacement revealed that ‘there are other important differences between refugees and IDPs which impact on durable solutions of problems caused by displacement. While refugee law is supported by 50 years of national jurisprudence, scholarly research, and UNHCR Executive Committee’s conclusions, the corresponding body of legal interpretation for IDPs is in its infancy. UNHCR is the ‘guardian’ of the 1951 Convention Relating to the Status of Refugees and was created in 1951 with a mandate of assisting and protecting refugees. For IDPs, there is no established ‘guardian’ of the Guiding Principles (although the Special Rapporteur on the Human Rights of IDPs often fulfils that function.) Nor is there a single UN agency charged with assisting and protecting IDPs, but rather under humanitarian reform, there is a looser approach in emergency situations whereby different agencies take the lead in different areas or “clusters”²⁰ that will be discussed further in chapter 3.

C. Impact of internal displacement

1. Protection risks caused by internal displacement

The term ‘internal displacement’ describes situations in which individuals and groups are (1) forced or obliged to leave and remain away from their homes, but (2) remain within the borders of their own countries.

‘The effect of internal displacement on IDPs themselves, as well as on the local authorities and communities that host them, can be devastating. While the act of displacement itself often may violate the human rights of those affected, the subsequent loss of access to homes, lands, livelihoods, personal documentation, family members, and social networks can negatively affect the ability of IDPs to assert and enjoy an entire range of fundamental rights.’²¹ Thus the purpose of working to enhance the protection of IDPs is to address distinct protection

¹⁸ James C. Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge, 2014), at 30-1.

¹⁹ Catherine Phuong, *supra* note 14, at 23-24.

²⁰ Durable Solutions for IDPs in Protracted Situations: Three Case Studies, *supra* note 16.

²¹ Brookings Institution-University of Bern: Project on Internal Displacement, *Protecting Internally Displaced Persons: A Manual for Law and Policy Makers*, 2008, at 2.

risks that they experience being caught in conflict.

The lessons learnt by the Global Protection Cluster (GPC)²² on the ground allowed to identify the particular factors of internal displacement that tend to heighten protection risks. They include the following:

- ‘- IDPs have lost their homes and, as a result, may be in need of shelter. In some cases, they may be compelled to seek shelter in crowded camps or settlements, which can give rise to various protection risks;

- they have often lost access to their land and other property and are cut off from their normal livelihoods and sources of income. As a result, they may suffer poverty, marginalization, exploitation and abuse;

- access to adequate food, safe water and public services, such as education and health care becomes difficult, often leading to high levels of hunger, malnutrition and disease;

- family and community-structures often collapse and family members become separated;

- identity documents often are lost, destroyed or confiscated in the course of displacement;

- the freedom of movement is limited;

- IDPs are exposed to landmines or explosive remnants of war.’²³

The complexities outlined above lead to conclude the treatment of economic and social rights is the main subject of concern in the protection regime for IDPs.

2. Specific needs of internally displaced women and children

Forced displacement and statelessness affect diverse women, girls, boys and men differently. Women and girls represent about 50 percent of IDP population anywhere in the world.²⁴ Despite these numbers, internally displaced women and girls are less likely than men and boys to have access to some of the most fundamental human rights. These include their right to food, health care, shelter, nationality and documentation.

‘The challenges that are specific and unique to female’s displaced status include sexual violence and exploitation. Women’s vulnerability to rape and sexual assaults continues during flight from their homes and remains high in many IDPs camps, particularly in camps that are

²² Established in 2005 as part of the humanitarian reform, the Global Protection Cluster is the main inter-agency forum at the global level for standard and policy setting as well as collaboration and overall coordination of activities supporting the protection response in complex and natural disaster humanitarian emergencies, including internal displacement. See chapter 3 for more details.

²³ Handbook for the Protection of IDPs, *supra* note 10, at 9.

²⁴ United Nations High Commissioner for Refugees, *UNHCR Age, Gender and Diversity: Accountability Report 2015*, available online at <http://www.unhcr.org/en-us/protection/women/5769092c7/unhcr-age-gender-diversity-accountability-report-2015.html> (last visited 29 June 2016).

overcrowded and have inadequate security and a lack of separate and distinctly placed sanitation and bathing facilities for women and for men.’²⁵

Displaced women may also have more difficulties in finding adequate jobs.²⁶ For instance, in Colombia, 60 percent of IDP women do not work (compared with 35 percent for men), and of those women who do work, 60 percent do so in the informal sectors; 20 percent work in domestic service.²⁷

‘Staying in school and completing their education tend to be more difficult for displaced girls than boys, especially in secondary schools. The reasons for low educational participation for girls are often related to limited or difficult school access, the presence or fear of an unsafe learning environment, financial constraints that require girls to contribute to family economies, lack of documentation or cultural assumptions about the value of educating girls.’²⁸

Children also constitute highly vulnerable IDP sub-populations. In the cases of long-lasting conflicts, displacement is all that these youths know. At the same time, childhood is a time when their lives most need stability. During flight from conflict zones, families and children are often exposed to multiple physical dangers. They are threatened by attacks, shelling, and landmines, and must often walk for days with only limited quantities of water and food. Under such circumstances, children often become acutely undernourished and prone to illness, and death.²⁹

D. Protection of IDPs

1. What is protection?

Protection is defined as all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, namely human rights law, international humanitarian law.³⁰

Protection can be seen as an objective, a legal responsibility, and an activity. ‘Protection is an objective which requires full and equal respect for the right of all individuals, without discrimination, as provided for in national and international law. Protection is not limited to

²⁵Sean Zheng, ‘Migration, Displaced Persons and Refugees’, in UN Gender Statistics Manual: Integrating a Gender Perspective into Statistics (2010), available online at <http://unstats.un.org/unsd/genderstatmanual/Refugees-and-internally-displaced-persons.ashx> (last visited 29 June 2016).

²⁶*Ibid.*

²⁷Louise Højen, *Colombia's 'Invisible Crisis': Internally Displaced Persons*, Council of Hemispheric Affairs, 2 February 2015, <http://www.coha.org/colombias-invisible-crisis-internally-displaced-persons/> (last visited 29 June 2016).

²⁸Migration, Displaced Persons and Refugees, *supra* note 25.

²⁹Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *The Rights and Guarantees of Internally Displaced Children in Armed Conflict*, Working Paper No.2, 2010, at 11, available online at <https://childrenandarmedconflict.un.org/publications/WorkingPaper-2-Rights-GuaranteesIDP-Children.pdf> (last visited 17 July 2016).

³⁰Office for the Coordination of Humanitarian Affairs, Inter-Agency Standing Committee, *Protection of Internally Displaced Persons*, Policy Paper Series, No. 2, 2000.

survival and physical security but covers the full range of rights, including civil and political rights, such as the right to freedom of movement, the right to political participation, and economic, social and cultural rights, including the rights to education and health.’³¹

‘Protection is a legal responsibility, principally of the State and its agents. In situations of armed conflict, that responsibility extends to all parties to the conflict under international humanitarian law, including armed opposition groups.’³² Humanitarian and human rights actors play an important role as well, in particular when States and other authorities are unable or unwilling to fulfil their protection obligations.’³³

‘Protection is an activity because action must be taken to ensure the enjoyment of rights. There are three types of protection activities that can be carried out concurrently: 1) responsive – to prevent or stop violations of rights; 2) remedial – to ensure a remedy to violations, including through access to justice and reparations; and 3) environment-building – to promote respect for rights and the rule of law.’³⁴

The next paragraph is concerned with protection as activity, in particular with the question who is responsible for protecting IDPs.

2. Who protects IDPs?

Primary responsibility for protecting IDPs and resolving their problems lies unequivocally with the state or other authorities in control of the territory where the IDPs find themselves. Too often, however, the authorities are unable or unwilling to provide protection and assistance for IDPs. In this case, international actors must step in to ensure their survival.³⁵ However, the role of international actors remains to reinforce, not replace, national responsibility. The next two sub-paragraphs will convey the basic points about how UN and states faced with internal displacement responded to the problems encountered by IDPs.

(a) International responses and the Guiding Principles

As it was summarized by the experts of Brookings Institution-University of Bern: Project on Internal Displacement, ‘since the end of the cold war, UN has facilitated domestic responses to internal displacement through the humanitarian assistance provided by its specialized agencies but also through the identification of the rules of international law that govern all states’

³¹Handbook for the Protection of IDPs, *supra* note 10, at 7.

³²*Ibid.*

³³ Report of the Secretary-General to the United Nations General Assembly, *Renewing the United Nations: A Programme for Reform*, UN doc. A/51/950.

³⁴ Handbook for the Protection of IDPs, *supra* note 10, at 7; International Committee of the Red Cross, *Strengthening Protection in War: A Search for Professional Standards*, 2001, at 20.

³⁵ ICRC, *ICRC Position on IDPs*, 2006, at 4, available online at https://www.icrc.org/eng/assets/files/other/2006_idps_en_icrcexternalposition.pdf (last visited 17 July 2016).

responses to displacement. These efforts have been strengthened since 2006 with the gradual implementation of a reform of the humanitarian system composed of three components: 1) creation of a Central Emergency Relief Fund; 2) improved support for UN resident and humanitarian coordinators; and 3) introduction of the cluster approach by designating clusters with an agency responsible for leading the cluster at the international as well as the country levels and for acting as provider of last resort if no other organizations are available in given situation to undertake necessary cluster activities.’³⁶ The clusters and designated agencies as well as lessons learnt by them on the ground will be covered in Chapter 3.

‘The first Representative to UN Secretary General on IDPs Dr. Francis Deng, was appointed in 1992 with a mandate to compile international standards composing the normative framework for addressing internal displacement. The result was the Guiding Principles, which were presented to the UN Commission on Human Rights in 1998. These principles reflect and are consistent with international human rights law and international humanitarian law.’³⁷ Thus, they reflect existing rules and clarify how they apply to internal displacement settings, instead of creating new obligations

‘Since their promulgation, the Guiding Principles have been accorded almost universal recognition as the normative departure point for dealing with displacement. The heads of state and government assembled in September 2005 in New York for the World Summit recognized the principles as an “important international framework for the protection of internally displaced persons,” an endorsement reiterated by the General Assembly.’³⁸ The governments of Germany and Iraq have even expressed the view that the Principles are now part of international law. Finally, the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) has reinforced the developing legal status of the Guiding Principles being the first internal displacement-specific convention covering an entire region.

Nonetheless, the World Summit Outcome document does not recognize the Guiding Principles as a ‘basic international norm’, as had been proposed by the Secretary-General.³⁹ And the number of domestic laws, regional judgments and other references is still not sufficient to claim the Guiding Principles as customary law. However, the trend seems to be moving in the direction of customary law. One of the main reasons is that the Guiding Principles are based on

³⁶*Protecting Internally Displaced Persons: A Manual for Law and Policy Makers*, *supra* note 21, at 3.

³⁷*Ibid.*

³⁸*Ibid*; United Nations, 2005 World Summit Outcome, UN Doc. A/RES/60/1, October 24, 2005, para.132, available online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement> (last visited 23 June 2016); UN General Assembly Resolution, *Protection of and Assistance to Internally Displaced Persons*, A/RES/62/153, 18 December 2007.

³⁹ UNHRC, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, 5 January 2010, A/HRC/13/21, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-21.pdf> (last visited 4 July 2016).

binding law and that many of their non-binding elements have become customary law or are on the road to becoming so.⁴⁰ It must be borne in mind that rapid international acceptance of the Guiding Principles was facilitated due to the fact they were developed relying on a restatement of obligations that can be said already to exist under human rights and humanitarian law. States are more willing to accept expert principles if they are not asked to assume new obligations, but rather to understand better how to apply their existing obligations in new situations.

(b) A state's responsibility towards IDPs

The Guiding Principles stress that states bear primary responsibility for protecting and assisting IDPs within their jurisdiction. As regards this, the Guiding Principles rest on two key tenets:

‘1. Sovereignty entails not only the right of each state to conduct its own affairs but also the primary duty and responsibility to provide protection and assistance without discrimination to its population, including the internally displaced, in accordance with international human rights and humanitarian law.’⁴¹

2. While those displaced within their own country remain entitled to the full protection of rights available to the population in general, displacement gives rise to particular vulnerabilities on the part of those affected. Therefore, and in order to ensure that the displaced are not deprived of their human rights, states are obligated to provide special measures of protection and assistance to IDPs that correspond to these vulnerabilities in order to ensure that IDPs are treated equally with respect to non-displaced citizens.’⁴²

A philosophical foundation behind the bedrock provision of the Guiding Principles on the primary responsibility of national authorities is the concept of sovereignty as responsibility.⁴³ ‘The security and wellbeing of internally displaced populations rest with their governments, and governments are expected to take steps to protect and assist them. If governments are unable or unwilling to assume this responsibility, the international community is expected to become involved. The concept is particularly evident in Guiding Principle 25 on humanitarian assistance. While acknowledging that primary responsibility for the displaced rests with their governments, the Principle acknowledges that international humanitarian organizations “have the right to offer their services in support of the internally displaced” and that such offers shall not be regarded “as an unfriendly act or as interference in a State’s internal

⁴⁰Chaloka Beyani, ‘The Politics of International Law: Transformation of the Guiding Principles on Internal Displacement from Soft Law into Hard Law’, 102 *Proceedings of the American Society of International Law* (2008), at 196.

⁴¹ Guiding Principles, *supra* note 3, Principle 3.1.: ‘National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.’

⁴²*Ibid*, Principles 1.1 and 4; *Protecting Internally Displaced Persons: A Manual for Law and Policy Makers*, *supra* note 21, at 3-4.

⁴³Francis M. Deng, *Protecting the Dispossessed* (Washington DC: Brookings Institution, 1993), at 14.

affairs.” Indeed, consent is not to be ‘arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required assistance’.⁴⁴

According to Cohen, the former co-director of the Brookings-LSE Project on Internal Displacement⁴⁵ and a leading expert on IDPs, ‘the concept of sovereignty cannot be dissociated from responsibility: that is to say, a state should not be able to claim the prerogatives of sovereignty unless it carries out its internationally recognized responsibilities to its citizens, which constitute of providing them with protection and life-supporting assistance. Failure to do so would legitimise the involvement of the international community in such protection and assistance. States unable to meet the urgent lifesaving needs of their citizens would be expressly required to accept offers of humanitarian assistance. When states whose population are at risk deliberately obstruct or outright refuse access, they should expect calibrated actions that range from diplomatic demarches to political pressures, sanctions, or, as a last resort, military intervention.’⁴⁶

In 2005, at UN World Summit the concept of sovereignty as responsibility was recognised as antecedent of ‘responsibility to protect’ (R2P).⁴⁷ However, ‘R2P goes one step further in spelling out a doctrine of ‘sovereignty as responsibility’ for invoking and implementing the international community’s protection responsibility when national efforts to prevent and protect populations from genocide, crimes against humanity, war crimes, and ethnic cleansing clearly fall short. Towards the end of his tenure as the Representative of UN Secretary General on IDPs Francis Deng began to express increasing frustration about the lack effective mechanisms to hold states accountable to fulfilling their responsibilities towards IDPs. Without these accountability mechanisms, the credibility of ‘sovereignty as responsibility’, in particular its international dimensions, risked being called into question. A key aspect of R2P’s added value to IDP protection efforts is in elaborating a doctrine for invoking and exercising international responsibility to protect populations in grave peril in those cases where national responsibility is altogether absent and international offers of assistance are being refused. In other words, R2P not only borrows the concept of sovereignty as responsibility, but helpfully builds upon it by elaborating the process, through UN and in particular the Security Council, and setting

⁴⁴ Roberta Cohen, Lessons Learned from the Development of the Guiding Principles on Internal Displacement, *The Crisis Migration Project, Institute for the Study of International Migration*, 2013, at 10.

⁴⁵ Brookings-LSE Project on Internal Displacement was a leading research and activity platform for IDPs that lasted over 20 years. It was established at the Brookings Institution – a non-profit organization devoted to independent research and policy solutions – in 1994 to support the mandate of the Representative of the UN Secretary-General on IDPs in order to increase its capacity to uphold the rights of millions of IDPs around the world. The project monitored displacement problems worldwide; developed the Guiding Principles and promoted their dissemination and application; and worked with governments, regional bodies, international organizations, and civil society to create more effective policies and institutional arrangements for IDPs.

⁴⁶ Roberta Cohen and Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Brookings Institution Press, 1998), at 7.

⁴⁷ 2005 World Summit Outcome document, *supra* note 38.

expectations for the international community to exercise its own protection responsibilities when national efforts patently fall short.⁴⁸

Thus, notwithstanding the principle of sovereignty, human rights law has enabled a focus on the situation of those displaced within their own country, allowing external interference to protect IDPs, when their own state is either unable or unwilling to do so. It encourages states generally to appreciate the advantages of dealing with forced displacement issues at the very source, and of avoiding or preventing the necessity for external involvement.

The Guiding Principles describe in detail the guarantees available to IDPs that must be provided both in order to prevent arbitrary displacement and to mitigate and end it when it occurs. The chapter 2 of this thesis will turn to the content of the main provisions of the Guiding Principles and relevant norms of international human rights law and international humanitarian law that underpin the states' obligations toward people in need in the situation of internal displacement.

(c) National and regional responses

One of the most encouraging signs of international acceptance of the Guiding Principles has been the proposal, adoption, and implementation of numerous laws, policies, and decrees addressing internal displacement in all regions of the world. Almost twenty countries have enacted laws and policies explicitly based on the Guiding Principles to date, while other countries have acted to regulate specific problems related to displacement in a manner consistent with their international obligations without necessarily referencing the Guiding Principles.

These developments reflect a growing realisation that internal displacement must be addressed at the national level, both as a matter of legal obligation and national interest.⁴⁹

The Framework for National Responsibility identifies 12 steps that governments should take towards ensuring an effective national response to internal displacement.⁵⁰ In addition to ensuring the protection of rights in accordance with international law, national responsibility in situations of internal displacement can be summarized as follows: '1) preventing displacement and minimizing its adverse effects; 2) raising national awareness about the problem; 3) collecting data on the number and condition of IDPs; 4) supporting training on the rights of IDPs; 5) creating a legal framework upholding the rights of IDPs; 6) developing a national policy on internal displacement; 7) designating an institutional focal point on IDPs; 8)

⁴⁸ Erin D. Mooney, 'Something Old, Something New, Something borrowed ... Something Blue? The Protection Potential of a Marriage of Concepts between R2P and IDPs protection', in Sara E. Davies and Luke Glanville (eds.), *Protecting the Displaced: Deepening the Responsibility to Protect* (Martinus Nijhoff Publishers, 2010), 59, at 76-77.

⁴⁹ Brookings Institution, *Protecting IDPs: A Manual for Law and Policy Makers*, *supra* note 21, at 4.

⁵⁰ Brookings Institution – University of Bern, Project on Internal Displacement, *Addressing Internal Displacement: Framework for National Responsibility*, 2005, at 5-6.

encouraging national human rights institutions to address internal displacement; 9) ensuring that IDPs participate in decision making; 10) supporting durable solutions; 11) allocating adequate resources to address internal displacement; and 12) cooperating with the international community when national capacity is insufficient.⁵¹

Taken collectively, these benchmarks constitute a framework for action for fulfilling national responsibility in situations of internal displacement.⁵² To enable state's authorities to be effective in these undertakings, the role of other actors, including national human rights institutions, regional bodies, international organizations, donors and civil society is also important. The chapter 4 of this thesis will elaborate on both national response to IDPs concerns in Ukraine and contributions made by international community there in order to facilitate finding of durable solutions and reintegration of affected citizens.

3. Approaches towards the protection of IDPs

After clarifying who bears the responsibility for the protection of IDPs, it is relevant to turn to approaches to which both national and international responses are subjected.

Effective protection is built around three common and inter-connected approaches: '1) protection must be rights-based; 2) individuals and communities are active and equal partners in protection; and 3) protection promotes full and equal respect for the human rights of all individuals, without discrimination of any kind. Use of these approaches is fundamental to ensure that a protection needs of IDPs are met throughout the different sectors of humanitarian response.'⁵³

To start off with a rights-based approach, it resides on perception that individuals are recognised as rights-holders with legal entitlements to protection and assistance. Unlike needs, rights generate responsibilities to ensure the protection and well-being of individuals. The State and other authorities are duty-bearers with responsibilities to respect and protect individuals' rights.⁵⁴

'A rights-based approach means that all international and regional policies, programmes and activities employed by national government and international community are based on rights, as provided in international law; further the realization of rights; and seek to strengthen the capacities of rights-holders to claim their rights, and the capacities of duty-bearers to meet their obligations to respect, protect and fulfil those rights.'⁵⁵

⁵¹*Ibid.*

⁵²*Ibid.*

⁵³Handbook for the Protection of IDPs, *supra* note 10, at 10.

⁵⁴*Ibid.*

⁵⁵*Ibid.*

Under a human rights-based approach, both national and international actors dealing with internal displacement are accountable to IDPs. They should undertake a joint human rights assessment of their planned support to ensure it is best targeted to improve access to rights.

Second, a community-based approach treats individuals and communities as equal partners in protection. IDPs, like other civilians at risk, develop their own strategies to reduce exposure to, and mitigate the effects of, protection risks. Such coping mechanisms are based on local knowledge and build upon existing capacities and resources within the displaced community, as well as the host communities. Experience has shown that for protection efforts to be effective and sustainable, they must be designed to recognize, support and strengthen the protection capacities of individuals and communities themselves.⁵⁶

‘By recognizing that all members of the community are active participants in decision making, a community-based approach reinforces the dignity and self-esteem of people and promotes their empowerment. People are empowered when they are able to become informed and active agents in addressing their own situation.

This way of working requires a thorough understanding of the context of displacement, including the socio-economic context, gender roles, and power dynamics within the community as well as the role of other actors, such as armed groups or the host population. It seeks to understand the community’s protection concerns and priorities and to identify its existing capacities to access and enjoy human rights.’⁵⁷

The third approach, that is protection without discrimination, promotes full and equal respect for the human rights of all individuals, irrespective of their age, gender, etc.

Non-discrimination is a fundamental human right, which cannot be violated under any circumstance. It is articulated in virtually every international and regional human rights instrument.⁵⁸ The Universal Declaration of Human Rights (UDHR) affirms that ‘everyone is entitled to all the rights and freedoms set forth in the Universal Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.⁵⁹ The principle of non-discrimination also comprises customary law, meaning that it applies whether or not a state has signed a particular human rights convention.

⁵⁶ UNHCR, *A Community-Based Approach in UNHCR Operations*, 2008, available online at <http://www.unhcr.org/47f0a0232.pdf> (last visited 5 July 2016).

⁵⁷ Handbook for the Protection of IDPs, *supra* note 10, at 11.

⁵⁸ Universal Declaration of Human Rights, Article 2; International Covenant on Civil and Political Rights, Articles 2 and 26; International Covenant of Economic, Social and Cultural Rights, Article 2(2); American Convention on Human Rights, Article 24; and African Charter on Human and People's Rights, Articles 2 and 3.

⁵⁹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 2.

In situations of armed conflict, international humanitarian law affirms that all civilians shall be ‘treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria’.⁶⁰ The principle of non-discrimination will be covered in more details further in this work when elaborating on the Guiding Principles.

For all of the foregoing in this chapter, the grave consequences of internal displacement made it a topic of concern among the international community. Therefore, it is an essential task to have a developed and broadly recognized framework of normative standards and institutional arrangements to guide the actions both of governments and of international humanitarian and development agencies in dealing with crises of internal displacement. The objective of the next two chapters of this thesis is to review the normative framework of IDPs’ protection and to analyse to what extent and how international community comes to the aid of internally displaced populations.

⁶⁰ International Committee of the Red Cross, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV)*, 12 August 1949, 75 UNTS 287, Articles 3 and 27.

3. The law applicable to situations of internal displacement

IDPs are entitled to enjoy, equally and without discrimination, the same rights and freedoms under international and national law as do other persons in their country. The full and equal protection under the state's national law should be compatible with the state's obligations under international law. If special international protection and assistance are provided under international law for vulnerable groups like children, women, persons with disability, why should not international law provide similar protection, i.e. additional and complementary to those granted to all human beings and citizens of a country, to IDPs who face similar or even higher degrees of vulnerability and hence more needs compared to other vulnerable groups. This is not to say that IDPs remain out of compass of international law. In fact, international law has much to offer for the protection of the internally displaced. In particular, the following bodies of law provide a comprehensive legal framework for protection in all situations of internal displacement, including during armed conflict: 1) international human rights law; 2) international humanitarian law; 3) refugee law. As regards the latter, it will not be covered further in this paper as far as refugee law does not apply directly to the protection of IDPs, although some refugee law principles are relevant, by analogy.⁶¹

For the sake of accuracy, it is relevant to mention that international criminal law governs individual criminal responsibility for war crimes and violations of the rules of international humanitarian law prohibiting displacement. These areas essentially important concerning displaced. However, their analysis is not within the reach of this paper as far as it goes too far from the legal framework of both national and international protection responses to IDPs.

This chapter will present an overview of the law applicable to situations of internal displacement, including the Guiding Principles as restatement of the relevant provisions of international law instruments. It will be questioned whether we should advocate for a binding UN treaty addressing the plight of internally displaced.

A. International human rights law

'To begin with, as human beings, IDPs are automatically entitled to the protection provided for under human rights law, which recognizes and protects the attributes of human dignity inherent to all individuals. States, in turn, are obliged to ensure respect for those universally recognized human rights essential to ensure the survival, well-being, and dignity of all persons subject to their territorial jurisdiction. The UDHR provides an authoritative statement of the basic tenets of

⁶¹A particularly important example of reference to refugee law by analogy is the principle of *non-refoulement*, providing protection for refugees against forced return to a situation where they would be at risk of persecution or physical harm.

human rights, most of which subsequently have been elaborated and the obligations they entail spelled out in a panoply of international and regional human rights instruments. With human rights concerns cutting across all phases of internal displacement – from its cause, to the conditions of displacement, to the search for solutions – the comprehensive coverage of human rights law is of tremendous importance to the internally displaced.⁶²

The sources of international human rights law include treaty and customary law. Customary international law results primarily from a general and consistent practice of states which states follow from a sense of legal obligation. In general, rules of customary international law are binding on all states.

The treaty rules encompass treaties that are open for ratification by all states as well as treaties constituting multilateral agreements among states in certain regions only. As a matter of international law, states parties to the universal and regional treaties are bound to observe the rights guaranteed in the treaty provisions, and to ensure that those rights are guaranteed under domestic law.⁶³

The challenge for international agencies and states was to identify the rights and guarantees dispersed in the rich body of international law that respond to the particular needs and protection risks that arise during displacement. This task has been fulfilled when the Guiding Principles brought together in one document the main rules of international law.⁶⁴ First and foremost, the legal basis of the rights derived from international human rights law and reflected in the Guiding Principles, can be found in the UDHR. Other international treaties that guarantee the human rights that the Guiding Principles apply to IDPs include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant of Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention Relating to the Status of Refugees, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁶⁵

‘In addition, many of the human rights accorded to IDPs in these documents and the Guiding Principles are also guaranteed at the regional level by the following instruments: the African Charter on Human and Peoples’ Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights, the Organization of African Unity Refugee Convention Relating to the Specific Aspects of Refugee

⁶²Erin D. Mooney, Towards a Protection Regime for IDPs, *supra* note 5, at 161.

⁶³Report of the Representative of the Secretary-General on Internally Displaced Persons, *Compilation and Analysis of Legal Norms*, UN Doc. E/CN.4/1996/52/Add.2, 5 December 1995, para. 14, available online at http://id.cdint.org/content/documents/Compilation_and_analysis_of_legal_norms.pdf (last visited 6 July 2016).

⁶⁴Handbook for the Protection of IDPs, *supra* note 10, at 20.

⁶⁵*Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, Studies in Transnational Legal Policy No. 41 (The American Society of International Law, 2008), 9, at 12.

Problems in Africa, the Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World, and the African Charter on the Rights and Welfare of the Child.’⁶⁶

A discussion of the human rights in the protection of IDPs according to the Guiding Principles is within the scope of the paragraph C of this chapter. Here it suffices to highlight the importance of the prohibition of torture, cruel, inhuman and degrading treatment or punishment, as well as the rights to peaceful enjoyment of property and to home and family life, for the prevention of displacement. The rights to personal safety and to a home as well as the rights to food, shelter, education and access to work, on the other hand, offer crucial protection during displacement. Many of these rights are also relevant to the question of return. These and all other human rights must be granted to all without discrimination, including on the grounds of displacement. Human rights cannot be restricted or suspended by virtue of internal displacement.

B. International humanitarian law

IDPs are not expressly mentioned in any international humanitarian law instrument. This does not mean that they are not protected. When internal displacement occurs in situations of armed conflict, whether inter-state or domestic in character, international humanitarian law also comes into effect. If IDPs find themselves in a state that is experiencing an armed conflict, and are not taking a direct part in hostilities, they are considered civilians and, as such, entitled to all the protections this body of law offers to civilians.

‘Though many provisions of international humanitarian law reflect and reinforce protection provided for under human rights law, because a number of human rights guarantees may be significantly limited or even derogated in situations of armed conflict, the protection provided by humanitarian law in these circumstances is particularly valuable.’⁶⁷

The principal instruments of international humanitarian law today are the four Geneva Conventions of 1949, in particular the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV) that is applicable in the circumstance of international armed conflict, and their two Additional Protocols of 1977⁶⁸, the first regulating international armed conflicts and the second non-international armed conflicts, as well as various instruments prohibiting or restricting the use specific of weapons like the Mine Ban Treaty, the Conventional Weapons Treaty and its protocols.

‘Alongside these instruments there exists an important body of customary law which

⁶⁶*Ibid*, at 13.

⁶⁷Erin D. Mooney, Towards a Protection Regime for IDPs, *supra* note 5, at 161.

⁶⁸ Geneva Convention IV, *supra* note 61; Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 U.N.T.S. 3; and Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609.

expands the scope of application of some of the rules laid down in these instruments to non-international armed conflict. This is an area where the written rules are far fewer than in international armed conflict: only common Article 3 of the four Geneva Conventions and the 18 substantive articles of Additional Protocol II which essentially applies in the situations of civil war.⁶⁹ Together with article 1 common to the four Geneva Conventions, mandating contracting parties to respect and to ensure respect for the Conventions in all circumstances, the Article 3 of the Geneva Convention IV reads as follows: 'In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: "1. Persons taking no active part in the hostilities... shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria"'.⁷⁰

Furthermore, the voluminous study on customary international humanitarian law published by the International Committee of the Red Cross (ICRC)⁷¹ confirms that the Guiding Principles, insofar as they are applied in situations of armed conflict, restate to a very large extent existing customary law. This study identifies 161 rules of customary law which are also relevant to IDPs. To illustrate, Rule 133 on the obligation to respect 'the property rights of displaced persons' and Rule 50 on the prohibition 'of destruction and seizure of property of an adversary..., unless required by imperative military necessity' points to the customary law foundation of Principles 21 and 29(2) in situations of armed conflict.⁷²

Humanitarian law applicable in situations of armed conflicts binds not only state actors but all parties to the conflict: states, their armed forces and non-state armed groups, whether these are insurgent groups opposing the state or groups such as paramilitary groups supported by the state. Individuals are indirectly bound by human rights and humanitarian law insofar as they can be prosecuted for violations of these obligations if they amount to war crimes.

C. Protection under the Guiding Principles

Although it is undisputed that the coverage of international human rights law and international humanitarian law extends to IDPs, these standards could not adequately address particular needs of IDPs until the Guiding Principles were adopted. Nowadays the Guiding Principles are serving

⁶⁹ Emanuela-Chiara Gillard, *The Rule of International Humanitarian Law in the Protection of Internally Displaced Persons*, 24 *Refugee Survey Quarterly* 3, 2005, at 39.

⁷⁰ Geneva Convention IV, *supra* note 61.

⁷¹ Jean-Marie Henckaerts, Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, (ICRC/Cambridge University Press 2005), available online at <https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf> (last visited 11 July 2016).

⁷² *Ibid*, at 175 and 472.

the purpose of filling this protection gap.

In many instances, the Guiding Principles cite verbatim the text of the provisions of human rights and humanitarian law on which they are based. This is especially clear in the cases where the Principles restate a general norm before elaborating what it means to give effect to this right for IDPs. For example, Principle 14 reaffirms the right of every human being to liberty of movement and freedom to choose his or her residence and then specifies that for IDPs this includes a right to move freely in and out of camps and settlements. Similarly, Principle 20 begins by stating the right of every human being to recognition before the law and then proceeds to specify that for IDPs this requires that the authorities facilitate the replacement of documents lost in the course of displacement, without imposing unreasonable conditions such as requiring return to one's area of habitual residence.⁷³

The 30 principles spell out what protection should mean for IDPs in all phases of internal displacement: providing protection from arbitrary displacement (first phase) and protection and assistance during displacement (second phase) and during return or resettlement and reintegration (third phase). The next sub-paragraphs 1 through 5 will discuss major substantive issues arising before, during and after displacement in the order they are addressed in the Guiding Principles.

Concerning the Introduction of the Guiding Principles, it provides a definition of IDPs, affirms that the Principles reflect international human rights law and international humanitarian law, and explains the purpose of the Principles, namely to provide guidance in situations of displacement. All these bases have been covered before. This is why, this analysis will start off with the general principles.

1. General principles

The Principle 1 embodies the principle of equality and non-discrimination and makes explicit what is only implicit in existing international law: IDPs are entitled to enjoy the same rights and freedoms as other persons in their country.⁷⁴ Any discrimination against IDPs because of their displacement is prohibited. The legal basis for this principle as it is rooted in the international law has been presented in Chapter 1 when dealing with approaches toward the protection of IDPs.

It is important to understand that the principle of non-discrimination does not preclude

⁷³Erin D. Mooney, Towards a Protection Regime for IDPs, *supra* note 5, at 164.

⁷⁴ Guiding Principles, *supra* note 3, Principle 1(1): 'Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.'

taking special measures to address the needs of IDPs and, in particular, of certain groups of internally displaced persons. Sometimes treating IDPs differently is unavoidable or even justified, for example, women and children (see, *infra*, Principle 4). Accordingly, the prohibition of discrimination is violated if IDPs are disadvantaged on the sole ground that they are displaced, but it does not outlaw distinctions that are based on serious and objective reasons.⁷⁵

The Principle 3 sets forth that national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction.⁷⁶ It is based on the generally recognized principle of sovereignty as has been elaborated in Chapter 1.

‘To assume the primary responsibility for protecting and assisting IDPs means on one hand respecting, protecting, and fulfilling their civil and political as well as their economic, social, and cultural rights. On the other hand, states have to take the legal and administrative measures necessary effectively to address situations of internal displacement. In this sense, the UN General Assembly “[e]ncourages States to continue to develop and implement domestic legislation and policies dealing with all stages of displacement, including through the identification of a national focal point within the Government for issues of internal displacement, and through the allocation of budget resources.” The number of states adopting such steps in reliance on the Framework for National Responsibility, as it has been outlined in the previous chapter, is growing.”⁷⁷

Whereas Principle 1 refers to discrimination against IDPs as compared with the rest of the population, Principle 4 prohibits discrimination among the displaced themselves on the basis of race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth or on any other similar criteria.⁷⁸ The scope of Principle 4 is restricted to protecting IDPs against discrimination only with respect to the provisions set forth in the Guiding Principles.⁷⁹

2. *Protection from arbitrary displacement*

Under the heading ‘Principles Relating to Protection from Displacement’, Principles 5 to 9 of the Guiding Principles articulate the ‘right [of every human being] to be protected against being

⁷⁵ Walter Kälin, *Guiding Principles on Internal Displacement: Annotations* (The American Society of International Law and The Brookings Institution, 2008), at 13.

⁷⁶ Guiding Principles, *supra* note 3, Principle 3(1).

⁷⁷ Walter Kälin, *Annotations*, *supra* note 76, at 19-20.

⁷⁸ Guiding Principles, *supra* note 3, Principle 4(1).

⁷⁹ Walter Kälin, *Annotations*, *supra* note 76, at 22-23.

arbitrarily displaced from his or her home or place of habitual residence'.⁸⁰ Thus, Principle 6 expressly recognizes a right not to be arbitrarily displaced.

The second sentence of Principles 2(2) also address the concern that the right not to be displaced would endanger or substitute the right to seek asylum by expressly providing that the Principles 'are without prejudice to the right to seek and enjoy asylum in other countries'. Indeed, these two human rights can be considered as being fully complementary, offering a choice to potential victims of displacement: to stay or to move.⁸¹

States have a duty to avoid the displacement of populations unless absolutely necessary and to protect against the displacement of groups with a special dependency on their lands.⁸² In addition, the right not to be displaced provides victims of arbitrary displacement the reparation before judicial or quasi-judicial bodies.

3. Protection during displacement

The next paragraphs will pay attention to the significance of movement-related rights, protection to family life and IDPs' documentation. Undisputedly, the importance of property rights (Principle 21) cannot be downplayed in terms of forced displacement. However, the most relevant of the Guiding Principles to property concerns is Principle 29. It focuses on the remedies for violations of rights in property, housing, and land and will be touched upon when dealing with the protection after displacement. Finally, the remaining range of rights guaranteed by the Guiding Principles during displacement will be referenced concisely in sub-paragraph (d).

(a) Movement-related rights

The freedom of movement encompasses the right to move freely and the right to choose one's place of residence within the borders of a state. The right to freedom of movement is clearly set forth in Principle 14 of the Guiding Principles. Its paragraph 1 expressly affirms the rights of IDPs to move freely throughout the territory of a state during their displacement.⁸³ This right is essential to the personal security and well-being of persons seeking to flee the real or potential effects of armed conflict, situations of generalized violence, human rights abuse, and disasters.

Principle 14(2) makes clear that IDPs may exercise the freedom of movement by finding safety and security in camps and other settlements. Not only does it indicate that IDPs have the right to enter and move freely about within camps and settlements, it also affirms their right to

⁸⁰*Ibid*, Principle 6(1).

⁸¹Michèle Morel, Maria Stavropoulou and Jean -François Durieux, *The History and Status of the Right not to Be Displaced, Forced Migration Review: Preventing Displacement* 41, 2012, at 5.

⁸²Handbook for the Protection of IDPs, *supra* note 10, at 33.

⁸³ Guiding Principles, *supra* note 3, Principle 14(1).

leave these sites on their own volition.⁸⁴

Particular attention should be given to Principle 15(c), which reflects the international refugee law principle of *non-refoulement* (the prohibition against forcible return), and applies it by analogy to situations of internal displacement. By vesting IDPs with the right to protection against forcible return or resettlement to danger zones within their own country, this Principle suggests that states are obliged to ensure that IDPs are not compelled to return or resettle to locations where their safety and security are at risk.⁸⁵

Freedom from arbitrary arrest or detention and the right to liberty and security of persons as set out in Principle 12 are also considered to be movement-related rights in internal displacement context.

(b) Protection of family life

The overarching rule relevant to the protection of family life is established by Guiding Principle 17(1), which provides that 'every human being has the right to respect of his or her family life.'⁸⁶ As developed in the text, this right includes two components: the right to remain together as a family unit and the right to reunification of family members if separation has occurred.⁸⁷

Guiding Principle 16 elaborates the rights of the internally displaced with regard to missing and dead relatives. Its first clause establishes that all IDPs have 'the right to know the fate and whereabouts of missing relatives.'⁸⁸

(c) Documentation of IDPs

Everyone has the right to recognition everywhere as a person before the law.⁸⁹ The wording of paragraph 1 of Principle 20 expressly reiterates this rights for IDPs.⁹⁰ The recognition of legal personality 'means that the individual is endowed with the capacity to be a person before the law'.⁹¹ Thus, this guarantee is a necessary prerequisite to all other individual rights and is, therefore, non-derogable.⁹²

⁸⁴*Ibid*, Principle 14(2).

⁸⁵*Ibid*, Principle 15(d); Joe Oloka-Onyango, 'Movement-Related Rights in the Context of Internal Displacement', in Walter Kälin *et al.* (eds), *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, Studies in Transnational Legal Policy No. 41 (The American Society of International Law, 2008), 9, at 11-12.

⁸⁶Guiding Principles, *supra* note 3, Principle 17(1).

⁸⁷*Ibid*, Principle 17(2).

⁸⁸*Ibid*, Principle 16(1).

⁸⁹ UDHR, Article 6; ICCPR, Article 16.

⁹⁰ Guiding Principles, *supra* note 3, Principle 20(1): 'Every human being has the right to recognition everywhere as a person before the law'.

⁹¹ Manfred Nowak, *U.N. Covenant on Civil and Political Rights, CCPR Commentary*, 2nd rev. ed. (Kehl am Rhein: Engel, 2005), at 370.

⁹² UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, UNTS, vol. 999, p. 171, Article 4(2).

‘The practical significance of Principle 20 of the Guiding Principles is to ensure that IDPs are not unable to exercise their rights simply because they lack the necessary documents or are unable to have lost documents replaced. Where personal documentation is a precondition for the exercise of key rights, states should ensure that IDPs have effective access to such documentation.’⁹³

Paragraph 2 of Principle 20 protects the needs of IDPs for personal identification, documentation and registration and provides that '[IDPs] shall be provided with all documents necessary for the effective exercise of their rights as soon as possible following their displacement and without unreasonable conditions being imposed.'⁹⁴ Documents can be necessary for the effective realization of liberty and security of the person, freedom of movement, the right to vote, and the right to property and possessions.⁹⁵

As regards practical obstacles that are encountered by IDPs, loss, destruction, or confiscation of identity and other important personal documentation is a common occurrence in situations of displacement. For IDPs to obtain replacement documentation often is very difficult. In a number of countries, it would require that IDPs travel back to their area of origin, even if the area remains unsafe. In this way, the obstacles relating to documentation often discriminate, especially when documentation requirements appear in the domestic legislation. For instance, the eligibility to humanitarian assistance or enrolment in formal educational institutions for displaced children are quite often blocked by the lack of documentation.⁹⁶ This is the case where practical challenges to the implementation of the Guiding Principles come to the surface.

Nevertheless, if an IDP status is created by virtue of events listed in paragraph 2 of Introduction to the Guiding Principles, it should encompass all causes of displacement and have prospective effect. If it is not observed, it would deprive IDPs of their right to be recognized as a person before the law and would entail related negative consequences.

(d) Other rights enjoyed by IDPs during displacement

Except for provisions discussed above, the Guiding Principles set forth that during displacement IDPs should enjoy a broad range of civil, political, economic, social and cultural rights, including the following:

⁹³Brookings Institution, *Protecting IDPs: A Manual for Law and Policy Makers*, *supra* note 21, at 157.

⁹⁴ Guiding Principles, *supra* note 3, Principle 20(2).

⁹⁵ Conor Foley and Barbara McCallin, 'The Recovery of Personal Documentation', in Walter Kälin *et al.* (eds.), *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, Studies in Transnational Legal Policy No. 41 (The American Society of International Law, 2008), 337, at 339.

⁹⁶ Erin Mooney and Jessica Wyndham, 'The Right to Education in Situations of Internal Displacement', in Walter Kälin *et al.* (eds.), *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, Studies in Transnational Legal Policy No. 41 (The American Society of International Law, 2008), 247, at 259.

- the right to life and to protection against acts of violence and torture, sexual and gender-based violence, landmines, and recruitment of children into armed forces or groups and their participation in hostilities (Principles 10, 11, and 13);
- the rights to safe access to essential food, potable water, basic shelter, appropriate clothing, medical services and sanitation (Principle 18);
- the right to medical care, including psychological and social services and efforts to prevent contagious and infectious diseases (Principle 19);
- the right to protection of property and possessions of IDPs (Principle 21);
- the right to employment and participation in economic activities and to vote and participate in government and public affairs (Principle 22);
- the right to education and training, equally for women and girls (Principle 23).

4. Humanitarian assistance during displacement

Humanitarian assistance is not defined by any of the major humanitarian or human rights instruments, including the Guiding Principles. Practically the term applies to items essential to survival such as food, water, medical supplies, clothing, and related 'non-food items' (e.g., water containers, soap, etc.) or the means to immediately obtain any such items (e.g., cash assistance). It also applies to essential services such as emergency medical care.⁹⁷

As regards the existence and scope of the right to humanitarian assistance, the Guiding Principles emphasize that it is the primary duty and responsibility of governments to provide humanitarian assistance to IDPs, stating so in both Principles 3(1) and 25(1).

The Guiding Principles also address the facilitation and regulation of humanitarian assistance. Authorities are required to grant and facilitate free passage of humanitarian assistance, including associated personnel (Principle 25(2-3)), and not to divert it for non-humanitarian purposes (Principle 24(2)).

5. Protection after displacement

(a) Return, local integration and resettlement

When the causes of displacement have ceased, affected populations have the right either voluntarily to return to their original place of residence, to begin a new life in the area to which they were displaced (local integration) or to settle in another part of the country. These are three

⁹⁷ David Fisher, 'The Right to Humanitarian Assistance', in Walter Kälin *et al.* (eds.), *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, Studies in Transnational Legal Policy No. 41 (The American Society of International Law, 2008), 47, at 47.

classical durable solutions⁹⁸ to displacement addressed in Principles 28-30 of the Guiding Principles.

i) The three durable solutions

A durable solution for IDPs is one that ends the cycle of displacement by resolving their plight so that they can lead normal lives. IDPs have the right to choose freely between return, local integration or resettlement, and competent authorities are responsible for creating the conditions that allow displaced persons to rebuild their lives in any one of these locations.

Return to the place of origin is often only possible if safety and security are restored and where conditions are created that, like access to livelihoods and basic services including health and education, allow the resumption of normal life.⁹⁹ Local integration takes place when people have no choice but to remain in their area of displacement or have consciously decided to integrate locally due to such factors as security, social networks, jobs, services and property ownership at their current residence.¹⁰⁰

From the refugee law perspective resettlement involves the selection and transfer of refugees from a state in which they sought protection to a third state which has agreed to admit them as refugees with permanent residence status.¹⁰¹ It is of note that the Guiding Principles refer to two solutions: return and resettlement in another part of the country.¹⁰² The latter option refers to settlement elsewhere in the country other than in one's place of origin. It encompasses the option for IDPs to settle permanently in the locality where they first arrived while displaced, as well as the possibility to move to another part of the country altogether. Given the specific meaning of resettlement in the refugee context as relocation to a third country, UNHCR recommends in contexts of internal displacement terms 'local settlement' and 'settlement' be used instead.¹⁰³

The three solutions are complementary in nature and, when applied together, can form a viable and comprehensive strategy for resolving displacement situation.

⁹⁸The Brookings Institution – University of Bern Project on Internal Displacement, *When Displacement Ends: A Framework for Durable Solutions*, 2007, available online at http://www.brookings.edu/~media/research/files/reports/2007/9/displacementends/2007_durablesolutions.pdf (last visited 13 July 2016).

⁹⁹ Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection* (Oxford University Press, 2009), at 507.

¹⁰⁰ Elizabeth Ferris, *Resolving Internal Displacement: Prospects for Local Integration*, Brookings-LSE Project on Internal Displacement, available online at <http://www.brookings.edu/research/reports/2011/06/01-protracted-displace-local> (last visited 13 July 2016).

¹⁰¹ UNHCR, *UNHCR Resettlement Handbook*, 2011, available online at <http://www.unhcr.org/46f7c0ee2.pdf> (last visited 13 July 2016), at 3.

¹⁰² Guiding Principles, *supra* note 3, Principle 28(1).

¹⁰³ UNHCR Resettlement Handbook, *supra* note 104, at 26.

ii) Is there a durable solution in case of protracted displacement?

Although there is no data on the achievement of durable solutions for IDPs who have chosen to return, integrate locally or settle elsewhere in the country, the monitoring reports by the UNHCR suggest that for the majority of the IDPs the displacement is likely to be protracted.¹⁰⁴ In countries where state fragility, conflict, and persecution have persisted for years, the majority of the world's internally displaced people live in conditions of protracted exile with little or no prospect of a durable solution to their predicament.

According to the UNHCR, two criteria are generally accepted as key features of protracted internal displacement: that the pursuit of durable solutions has stalled, and/or that IDPs are marginalised as a result of a failure to protect their human rights.¹⁰⁵ In view of the protracted displacement it is essential that government puts in place policies, frameworks, support structures and programmes to ensure durable solutions. According to the IASC Framework on Durable Solutions for IDPs, 'a durable solution is achieved when IDPs no longer have any specific assistance and protection needs that are linked to their displacement, and can enjoy their human rights without discrimination on account of their displacement. This can be achieved through sustainable reintegration at the place of origin; sustainable local integration in areas where IDPs take refuge; or sustainable integration in another part of the country.'¹⁰⁶ IDPs who have achieved a durable solution enjoy, without discrimination: long-term safety, security and freedom of movement; an adequate standard of living, access to adequate food, water, housing, health care and basic education; access to employment and livelihoods; and access to effective mechanisms that restore their housing, land and property or provide them with compensation.¹⁰⁷

Although, the governments of states faced with the internal displacement have taken some positive steps on the way to a durable solution, their domestic policies have the shortcomings and, quite often, political considerations cause practical incapacibilities. As a result, it underscores the severe limits, if not the infeasibility of the three traditional durable solutions to protracted population displacement. To illustrate, in both Iraq and Syria,¹⁰⁸ voluntary return is unacceptable to the IDPs because of the high levels of insecurity in the affected territories, the

¹⁰⁴ UNHCR Global Trends 2015, *supra* note 6, at 13.

¹⁰⁵ UNHCR, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, Walter Kälin, 5 January 2010, A/HRC/13/21/Add.3, para.10.

¹⁰⁶ The Brookings Institution-University of Bern Project on Internal Displacement, *Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons*, April 2010, available online at <http://www.unhcr.org/50f94cd49.pdf> (last visited 23 April 2016).

¹⁰⁷ *Ibid.*

¹⁰⁸ The Brookings Institution – London School of Economics Project on Internal Displacement and The International Rescue Committee, *Improving Prospects for Durable Solutions for Iraqi Internally Displaced Persons and Refugees*, 24 February 2012, available online at <http://www.brookings.edu/~media/events/2012/2/24-iraqi-displacement/event-report.pdf> (last visited 13 July 2016).

failure of development and weak or non-existent governance; countries which are involved in conflict and are subject to political instability and weak economic performance, cannot ensure local integration because of the lack of political will or funds, tight legal regulation, etc.; and resettlement in other parts of the country is possible but for a selected few because of land and property concerns in the hosting communities and lack of acquiescence on the part of the latter.¹⁰⁹ These constraints are not unique to Iraq and Syria; they equally apply to other large scale displacement anywhere in the world. Thus, ‘as potential solutions, return, integration, and resettlement lack the resilience to unlock contemporary protracted displacement situations – they are not so much “undurable” solutions as unstartable.’¹¹⁰

A legitimate question that springs to mind in this connection is ‘when does displacement end?’. This question does not have a defined answer.¹¹¹ It must be asked in every single instance of displacement because each case would be different in the initial cause of the involuntary displacement. Moreover, there is no clear criteria for defining the end of the state of displacement and the measurements to ascertain that criteria are met. The Guiding Principles do not state when they no longer apply.

(b) Property restitution and compensation

It has been increasingly recognized that it is the dispossession from homes and other properties that lies at the root of the displacement of IDPs. Thus, it is important that IDPs should be allowed to retain possession of, or reclaim, any property that they own. Of particular importance in this regard is Principle 29 that refers to the obligation of authorities to assist IDPs in recovering their property or, if this is not possible, obtaining compensation. Competent authorities have the duty and responsibility to assist returned and/or resettled IDPs ‘to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement.’¹¹² When recovery of such property and possessions is not possible, ‘competent authorities shall provide or assist these persons in obtaining appropriate compensation’ or another form of just reparation.¹¹³

Along with Principle 29 of the Guiding Principles, the 2005 UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, also known as the ‘Pinheiro

¹⁰⁹The Refugee Studies Centre, *Unlocking Protracted Displacement: Iraqi Case Study*, Working Paper Series No.78, 2011, at 14-15, available online at <http://www.internal-displacement.org/assets/publications/2011/201108-Unlocking-protracted-displacement-Iraqi-case-study-thematic-en.pdf> (last visited 13 July 2016).

¹¹⁰Roger Zetter, *Unlocking the Protracted Displacement of Refugees and Internally Displaced Persons: An Overview*, 30 *Refugee Survey Quarterly* 4 (2011) 30, at 8.

¹¹¹Michael M. Cernea, *The Question Not Asked: When Does Displacement End?*, *Forced Migration Review* 17 (2003), at 25-26.

¹¹²Guiding Principles, *supra* note 3, Principle 29(2).

¹¹³*Ibid.*

Principles',¹¹⁴ envisage that IDPs have access to effective mechanisms for timely restitution of their housing, land and property lost as the result of armed conflict.

The process through which restitution of housing, land and property and related compensation is carried out is governed by the domestic legislation. Adoption of relevant laws can be complex and time-consuming arrangements. It is not necessary for this process to be fully concluded before IDPs can be said to have found a durable solution. The determining factor is that they are able to reside safely and securely during the interim.

A point of precision has to be made in respect of the concept of housing, land and property. By definition displacement means being forced to leave one's home and find another place to stay. Housing, land and property matters are therefore fundamental issues that lay at the very heart of displacement and are complex concepts. While each unique legal and human rights concepts, they are at the same time closely related to one another and to a certain degree overlap with one another. In general terms, housing rights are those rights of everyone to have access to a safe, secure, affordable and habitable home. Land rights refer to both rural and urban areas and cover those rights related directly to the land itself, as distinct from purely the structure built on the land in question. While property rights concern the exclusive user and ownership rights over a particular dwelling or land parcel. Each of these terms are important, but none of them capture in their entirety the full spectrum of 'rights to the home' that is envisaged under international human rights law. For the purposes of the restitution process in the context of internal displacement, therefore, increasingly the term 'housing, land and property rights' is used to describe the numerous residential dimensions of these questions.¹¹⁵

6. The future of the Guiding Principles

Globally, about twenty states have to date incorporated the Guiding Principles into their national legislation and policy, or have drawn inspiration from them, at least implying a degree of approval of the right not to be displaced. Nonetheless, someone can argue that restating and clarifying a legal norm in a legally binding or otherwise authoritative instrument, thereby defining explicitly what is implicit in international law, is likely to significantly strengthen

¹¹⁴UN Sub-Commission on the Promotion and Protection of Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, 28 June 2005, E/CN.4/Sub.2/2005/17, available online at <http://www.unhcr.org/50f94d849.html> (last visited 23 April 2016). The principles are named after Paulo Sérgio Pinheiro, the Special Rapporteur on Housing and Property Restitution for Refugees and IDPs. They consolidate the norm of post-conflict restitution of property and they also provide a set of standards for property repossession regimes to be applied worldwide.

¹¹⁵ Catherine Phuong, *supra* note 14, at 145.

existing protection. This allegation was critically addressed by both Roberta Cohen and Walter Kälin, who are prominent experts in the issues of internal displacement.¹¹⁶

They set forth very practical and persuasive reasons to avoid 'the convention route'¹¹⁷ at this time. To begin with, human rights treaty making is a very cumbersome process and it could take a decade or more to complete a treaty, but there is then no guarantee that the necessary ratifications will be secured or that the states most affected by the problem will ratify the instrument or do so without crippling reservations. India, for example, has refused to ratify the Refugees Convention. Moreover, states do not always comply with the treaties they ratify.

Negotiating a treaty could also become a pretext to watering down accepted provisions of international human rights and humanitarian law on which the principles are based. Many states see no need for a treaty on IDPs when existing law provides adequate protection as restated in the Guiding Principles. Last but not the least, the idea that internal displacement is essentially an 'internal affair' remains strong in many parts of the world. In this political environment it is better to continue to build consensus from the bottom up.¹¹⁸

Taken together, all these considerations call attention to the non-binding nature of the Guiding Principles. Along with this, it is essential to continue, as Secretary-General Kofi Annan stressed in 2005, to promote the adoption of principles through national legislation and thus to incorporate them at the domestic level.¹¹⁹ It remains to be seen whether worldwide usage and implementation of the Guiding Principles will be transformed into a universal convention on the protection of IDPs.

Thus, Chapter 2 has focused on the issue of internal displacement as a humanitarian problem which draws on a human rights framework. The aim of the next chapter is to consider both UN's and broader international response to this problem and present the relevant institutional framework of protection for IDPs.

¹¹⁶Roberta Cohen, The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting, *Global Governance* 10 (2004); Walter Kälin, The Future of the Guiding Principles on Internal Displacement, *Forced Migration Review: Special Issue* (2006).

¹¹⁷*Ibid*, Roberta Cohen, The Guiding Principles on Internal Displacement, at 475.

¹¹⁸*Ibid*, Walter Kälin, The Future of the Guiding Principles, at 5.

¹¹⁹2005 World Summit Outcome document, *supra* note 38, para. 132.

4. UN institutional framework for protection and assistance to IDPs

Before turning to the question of coordinated efforts by international actors concerning the protection and assistance to IDPs, however, the legitimate basis for such action on their side will be briefly reiterated. Factor that justifies international, including UN's, action toward IDPs' protection is explained through the concept of state sovereignty as responsibility. According to it, the state authorities are seen as having the responsibility to protect those of their citizens whose rights are being violated. As such providing protection and assistance to IDPs is first and foremost the responsibility of the state and its institutions. 'However, if a state is unwilling or unable to protect the rights of its own citizens, it temporarily forfeits a moral claim to be treated as legitimate. Its sovereignty, as well as its right to non-intervention, is suspended; and a residual responsibility necessitates vigorous action by outsiders to protect populations at risk.'¹²⁰

The UN peacekeeping operations as a form of international collaborative response towards IDPs will not be touched upon in this thesis. It is explained by the fact that last chapter deals with the situation of internal displacement in Ukraine, where the monitoring of ceasefire agreement is the responsibility of the OSCE. At the same time, the thesis will try to answer the question about the adequacy of protection response in Ukraine relying on the legal picture which surrounds internal displacement as Chapters 1 to 3 provide.

A. The Special Rapporteur on the Human Rights of IDPs

Although protection is based in law, it also requires institutional mechanisms and actors to give it practical effect. The complex and diverse nature of internal displacement has created serious controversies around who, when, and how to protect IDPs. At present, UN has no specific designated unit to address global IDPs concerns except for an *ad hoc* discretionary position – the Special Rapporteur on the Human Rights of IDPs (Special Rapporteur on IDPs).

The introduction of this position goes back to 1992 when UN Secretary-General Boutros Boutros-Ghali submitted the first analytical report on IDPs to the UN Commission on Human Rights in Geneva.¹²¹ This report underlined that if the UN human rights system is to play any credible role in the wider humanitarian response, the establishment of a special focal point ought to be the first order of business. As a result of a concerted NGO advocacy campaign, the commission authorised the UN Secretary-General in resolution 1992/73 to appoint the Representative of the Secretary-General on the Human Rights of IDPs to explore 'views and information from all Governments on the human rights issues related to IDPs, including an

¹²⁰Thomas G. Weiss and David A. Korn, *Internal Displacement: Conceptualizations and Its Consequences* (Routledge, 2006), at 37.

¹²¹ UN Secretary-General, *Analytical Report of the Secretary-General on Internally Displaced Persons*, 1992, E/CN.4/1992/23.

examination of existing international human rights, humanitarian and refugee law and standards and their applicability to the protection of and relief assistance to IDPs'.¹²²

Shortly thereafter the UN Secretary-General designated Mr. Francis M. Deng, a former Sudanese diplomat to assume the position. Afterwards, his post was taken over by Mr. Walter Kälin. As per the institutional building arrangement of the UN Human Rights Council which required the harmonisation of the titles of the various special procedures, it was agreed that the title of the representative be changed from 'the Representative of the Secretary-General on the Human Rights of IDPs' to 'the Special Rapporteur on the Human Rights of IDPs'. Dr. Chaloka Beyani is the first and current Special Rapporteur on IDPs.

The mandate of the Special Rapporteur on IDPs traverses both areas of human rights and humanitarian affairs, helping and encouraging a close affinity and relationship between the mandate and humanitarian organisations to emerge. The Special Rapporteur on IDPs enjoyed a standing invitation and participation in the IASC; signed memorandum of understanding with the UN Office for the Coordination of Humanitarian Affairs (OCHA) and UNHCR; and developed close ties with international humanitarian organisations such as the ICRC. It has also cultivated an excellent working relationship with regional organisations, namely, the African Union, the Organization of American States and the Organization for Security and Co-operation in Europe (OSCE).

The mandate of the Special Rapporteur on IDPs has three important pillars.¹²³ These include conducting country missions and visits; promoting institutional coordination and response to the plight of IDPs; and developing the appropriate framework for the protection and assistance of IDPs. The most notable aspect of the mandate is the fact that the founding resolution of 1992, as well as further resolutions on the renewal of the mandate, provide that the responsibilities of the Special Rapporteur on IDPs also include the development and elaboration of a legal framework.¹²⁴ The most prominent achievement in this regard was the development and adoption of the Guiding Principles. Currently, the Special Rapporteur on IDPs is tasked, in the cooperation with other UN bodies, in particular the UN Office of the High Commissioner for Human Rights (OHCHR) – to encourage 'the continued dissemination and promotion of the

¹²² UN Commission on Human Rights Resolution, *Internally Displaced Persons*, E/CN.4/RES/1992/73, 5 March 1992, para.2, at 173, available online at http://www.ohchr.org/Documents/Issues/IDPersons/E%20CN.4_RES_1992_73.pdf (last visited 15 July 2016); Thomas G. Weiss, *Internal Exiles: What Next for Internally Displaced Persons?*, 24 *Third World Quarterly* 3 (2003), at 430.

¹²³ UN Human Rights Council Resolution, *Mandate of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, A/HRC/RES/6/32, 14 December 2007.

¹²⁴ Allehone M. Abebe, *Special Rapporteurs as Law Makers: The Developments and Evolution of the Normative Framework for Protecting and Assisting Internally Displaced Persons*, 15 *The International Journal of Human Rights* 2 (2011), at 288.

Guiding Principles'.¹²⁵

At the same time, the mandate of the Special Rapporteur on IDPs does not provide for permanent presence in the field. By virtue of this fact, this mandate clearly is not equipped to assume operational responsibility for providing protection and assistance to the world's internally displaced. In order to fill this institutional gap, early into his mandate, the Representative of the UN Secretary-General on IDPs identified three options for institutional arrangements for the internally displaced.¹²⁶ The first of these was the creation of a new agency singularly dedicated to the internally displaced. However, as the political and financial feasibility of this option put its realization into doubt, a second option was to assign responsibility for IDPs to an existing agency. It was suggested that the UNHCR would be a strong candidate for this role given its expertise in providing protection in situations of displacement and its experience of involvement with the internally displaced. However, this agency does not have the capacity to assume worldwide responsibility for IDPs, who outnumber by several millions the global refugee population for whom the agency has a statutory responsibility. A third option consisted of a collaborative approach among the different relevant agencies, coordinated by a central mechanism. To date, this last option has been the preferred approach of the international community¹²⁷ and will be described further.

B. Collaborative response to IDPs

Internal displacement and humanitarian crises require a multi-dimensional response. An array of UN humanitarian, human rights, and development agencies and international NGOs are certainly involved in providing assistance, protection, and development aid for IDPs. As mentioned before, none of these organizations, however, has a global mandate to protect and assist internally displaced population.

The foundations of the current international humanitarian coordination system were established by UN General Assembly Resolution 46/182,¹²⁸ which created both the IASC and the Emergency Relief Coordinator (ERC).

The ERC, also the UN Under-Secretary-General for Humanitarian Affairs, is responsible for the coordination of inter-agency humanitarian action. This function comprises advocating for

¹²⁵ UN Commission on Human Rights Resolution, *Internally Displaced Persons*, E/CN.4/RES/2005/46, 29 April 2005, para. 8.

¹²⁶ Report of the Representative of the Secretary-General on IDPs to the UN Commission on Human Rights at its Forty-Ninth Session, *Comprehensive Study Prepared by Mr. Francis M. Deng, Representative of the Secretary-General on the Human Rights Issues Related to Internally Displaced Persons*, Pursuant to Commission on Human Rights Resolution 1992/73, UN Doc. E/CN.4/1993/35, 21 January 1993.

¹²⁷ Erin D. Mooney, *Towards a Protection Regime for IDPs*, *supra* note 5, at 167.

¹²⁸ UN General Assembly Resolution, *Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations*, A/RES/46/182, 19 December 1991.

protection and assistance, mobilizing political and financial support, briefing the Security Council, and engaging in dialogue with governments, humanitarian agencies, and other relevant actors.

The IASC, chaired by the ERC, is a unique forum involving the key UN and non-UN humanitarian partners. It serves as the primary mechanism for coordination and decision making on issues of humanitarian action. According to General Assembly Resolution 46/182, the IASC brings together a broad range of UN humanitarian, human rights and development agencies, the International Organization for Migration, three consortia of major international NGOs, and the Special Rapporteur on the Human Rights of IDPs. The ICRC and the International Federation of Red Cross and Red Crescent Societies participate as observers.

In fact, the strength and added value of the IASC lies in its broad membership, bringing together all key humanitarian actors. The IASC's overall objective is inclusive coordination, while maintaining a relatively limited number of members to ensure functionality and focus.¹²⁹ The IASC develops humanitarian policies and tools, advocates for the respect of humanitarian principles, agrees on a division of responsibility for various humanitarian actions, and works to bridge any identified gaps in the overall response.

‘A collaborative response requires teamwork that draws on the varying mandates, expertise and operational capacities of the wide range of actors involved, pooling their efforts to ensure a comprehensive and predictable response...In practice, however, this has presented a challenge, owing to the absence of clearly defined responsibilities and inconsistent coordination giving rise to a number of critical gaps.’¹³⁰

First, the involvement of humanitarian actors with the internally displaced occurred on a case-by-case basis, determined by issues of mandate, access, and the availability of resources. As a result, international action on behalf of the displaced was highly unpredictable, in terms of not only whether it would occur but also what international actors would be involved and what specific role they would play.¹³¹

Second, the international community advanced on providing humanitarian relief to IDPs while not paying essential attention to other important considerations. The most critical gap was insufficient attention to protection and human rights concerns. It undermined the effect of assistance programmes in general since the broader dimension of the problem was ignored.

To eliminate these flaws and facilitate effective protection to IDPs, the IASC agreed to a comprehensive reform of the humanitarian response system in 2005, thus adopting the so-called

¹²⁹IASC, *Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response*, 24 November 2006, at 2, available online at https://interagencystandingcommittee.org/system/files/legacy_files/Cluster%20implementation%2C%20Guidance%20Note%2C%20WG66%2C%2020061115-.pdf (last visited 18 July 2016).

¹³⁰Handbook for the Protection of IDPs, *supra* note 10, at 44.

¹³¹Erin D. Mooney, *Towards a Protection Regime for IDPs*, *supra* note 5, at 168.

‘cluster approach’.

1. Cluster approach

According to Roberta Cohan and Francis M. Deng, ‘the choice of international action at present is to make more effective use of existing mandates and capacities through a collaborative effort under the Emergency Relief Coordinator... and the humanitarian coordinators in the field.’¹³² This is the system of Global Protection Cluster where a great number of actors are involved in the humanitarian coordination and each of them undertakes a more targeted approach within its specific designated area. The various agencies established an effective division of labour, encompassing not only the provision of material assistance to the displaced but also their need for physical security, protection of human rights, and reintegration and development support.¹³³

The cluster approach is not in itself a mandate-giving mechanism. It is an arrangement through which the existing mandates of international organizations are brought together in a coordinated and predictable fashion.¹³⁴ Clusters are groups of humanitarian organizations, both UN and non-UN, in each of the main sectors of humanitarian action. Each cluster is led by an international agency or organization with particular expertise in the area.

The ultimate goal of the cluster approach is to improve the effectiveness of humanitarian response by ensuring greater predictability and accountability, while at the same time strengthening partnerships between NGOs, international organizations and other stakeholders.

The cluster leads at the global level have now been designated by the IASC for eleven sectors or areas of activity which in the past either lacked predictable leadership in situations of humanitarian emergency, or where there was considered to be a need to strengthen leadership and partnership with other humanitarian actors. These sectors are: protection, camp coordination and management and emergency shelter, led by the UNHCR; early recovery, led by UN Development Programme (UNDP); health, led by the World Health Organization (WHO); water, sanitation and hygiene, nutrition and education led by UN Children Fund (UNICEF); agriculture, led by the Food and Agriculture Organization of the UN (FAO); logistics and food, led by UN World Food Programme (WFP); and emergency telecommunications, led by OCHA, UNICEF and WFP.¹³⁵

¹³²Masses in Flight, *supra* note 46, at 10.

¹³³*Ibid.*

¹³⁴UNHCR Informal Consultative Meeting, *The Protection of Internally Displaced Persons and the Role of UNHCR*, 27 February 2007, para. 13, available online at <http://www.unhcr.org/uk/protection/idps/50f951df9/protection-internally-displaced-persons-role-unhcr-excom-informal-consultative.html> (last visited 22 July 2016).

¹³⁵Handbook for the protection of IDPs, *supra* note 10, at 46.

2. *UNHCR and the centrality of protection* In line with its expertise and experience, within the clusters system, UNHCR agreed to assume the lead or co-lead role in three of the eleven areas of response: protection, emergency shelter, and camp coordination and management.¹³⁶

As regards the legal basis for UNHCR's involvement with IDPs, UN General Assembly Resolution 428 (V) of 1950 which established the Office of the UNHCR does not confer a specific mandate for IDPs on the organization. Article 9 of the Statute of the UNHCR, annexed to the Resolution, however authorizes the High Commissioner to 'engage in such activities... as the General Assembly may determine, within the limits of the resources placed at his disposal'.¹³⁷ Consistent with this provision, the General Assembly has, over the years, broadened the competence of the UNHCR to include groups of forcibly displaced persons who do not fall, individually or collectively, within the scope of the refugee definition in the Statute.¹³⁸ The resolution on southern Sudan¹³⁹ is an early example.

From the very onset, some states were concerned about perceived interference with national sovereignty or unwarranted interventions. These concerns were addressed through the requirement that UNHCR's engagement, first, would be at the request of the Secretary-General or the competent principal organs of the UN. Second, the consent of the state concerned had to be given. These threshold criteria are reiterated in a number of General Assembly Resolutions, notably 53/125 (1998).¹⁴⁰ Today, the foundation for UNHCR's engagement with IDPs is widely attributed to this resolution, paragraph 16 of which reaffirms 'support for the role of the Office of the High Commissioner in providing humanitarian assistance and protection to [IDPs], on the basis of specific requests from the Secretary-General or the competent organs of the United Nations and with the consent of the State concerned, taking into account the complementarities of the mandates and expertise of other relevant organizations', and emphasizes that 'activities on behalf of [IDPs] must not undermine the institution of asylum'.¹⁴¹

UNHCR is a mainstream agency in the protection sector. In this respect it is relevant to recall that, in December 2013 the IASC Principals issued a Statement on the Centrality of Protection in Humanitarian Action, which is a core commitment for humanitarian coordinators,

¹³⁶UNHCR Executive Committee, *General Conclusion on International Protection*, Conclusion No. 102(LVI), 7 October 2005, para. X, available online at <http://www.unhcr.org/en-us/excom/exconc/43575ce3e/general-conclusion-international-protection.html> (last visited 19 July 2016).

¹³⁷ UN General Assembly, *Statute of the Office of the UNHCR*, 14 December 1950, A/RES/428(V).

¹³⁸ UNHCR Informal Consultative Meeting, 27 February 2007, *supra* note 139.

¹³⁹ UN General Assembly Resolution, *Assistance to Sudanese Refugees Returning from Abroad*, 12 December 1972, A/RES/2958 (XXVII).

¹⁴⁰ UNHCR Informal Consultative Meeting, 27 February 2007, *supra* note 139.

¹⁴¹ UN General Assembly Resolution, *Resolution on the Report of the Third Committee (A/53/620)*, 12 February 1999, A/RES/53/125.

humanitarian country team and clusters.¹⁴² It acknowledges that protection is a cross-cutting issue that should be integrated into the work of all humanitarian actors, in view of the shared responsibility to ensure that activities do not lead to or perpetuate discrimination, abuse, violence, neglect or exploitation but, rather, that they promote human rights and enhance protection.

The Global Protection Cluster (GPC) was established as the main forum for the coordination of protection activities in humanitarian action. Since protection covers a wide range of activities, the work of GPC is subdivided into specific areas of responsibility coordinated by focal point agencies with mandate expertise for the activities within them. The areas of responsibility encompass child protection; housing, land and property rights; prevention of, and response to gender based violence; rule of law and justice and mine action. The GPC includes United Nations humanitarian, human rights and development agencies as well as non-governmental and other international organizations active in protection.

UNHCR, as the cluster lead agency for protection, is responsible for leading the development of standards and policies for protection of the internally displaced, building capacities among participating agencies, and coordinating operational support for new and ongoing emergencies. It is also responsible for ensuring that activities carried out under other clusters will be executed with protection in mind, and that protection issues are mainstreamed in all operations, at all levels, and in every sector.¹⁴³

3. Country-level coordination

Clusters in specific country situations can only be activated by UN ERC, with the endorsement of IASC Principals. Agreement must be reached on which clusters to establish, and which organizations will lead them. Cluster leads are chosen based on their global role and reputation, including funding, programming and capacity, within a specific sector. At a national level, if the global cluster lead does not have a strong presence in the field, a different organization will be chosen to be the national cluster lead, which has the understanding of the local context and actors within the sector.

The existing arrangement is that the responsibility for coordinating UN action for protecting and assisting IDPs rests with the UN humanitarian coordinator of the country concerned. The humanitarian coordinator is accountable to the ERC. The responsibilities of the UN humanitarian country team for protecting and assisting IDPs is to be reflected in a

¹⁴² Statement by IASC Principals, *Centrality of Protection in Humanitarian Action*, 17 December 2013, available online at https://interagencystandingcommittee.org/sites/default/files/centrality_of_protection_in_humanitarian_action_statement_by_iasc_princi.pdf (last visited 21 July 2016).

¹⁴³ UNHCR Resettlement Handbook, *supra* note 104, at 26-27.

comprehensive plan of action for each country situation of internal displacement. The plan shall set forth the most appropriate solutions for a crisis, taking into account the local situation.¹⁴⁴

In addition, the humanitarian coordinator works in support of the host government. As such, the humanitarian coordinator is to engage in dialogue with the national and local authorities to impress upon them their primary responsibility for protecting and assisting the internally displaced in conformity with international human rights and humanitarian law, using the Guiding Principles as a frame of reference. The coordinator also is to suggest to the national and local authorities ways in which UN can help to strengthen their capacity to provide protection and promote durable solutions. Lobbying the authorities for unimpeded humanitarian access on the part of international agencies to internally displaced populations at risk and in need is expected.¹⁴⁵

Thus, Chapters 2 and 3 have made it clear what is the international legal framework for IDPs and which institutional arrangements are applicable within UN system and beyond to enhance the protection of IDPs. The next chapter will turn to internal displacement in Ukraine caused by armed conflict in East of the country in 2014. In this context it will be illustrated how UN has established its presence there guided by the cluster approach and how seriously the Ukrainian government takes its state obligation to protect IDPs across international standards.

¹⁴⁴ IASC, Guidance Note on Using the Cluster Approach, *supra* note 133, at 6.

¹⁴⁵ Erin D. Mooney, Towards a Protection Regime for IDPs, *supra* note 5, at 169.

5. National response towards IDPs in Ukraine

A. Overview of displacement in Ukraine

1. Factual background

Leaving behind at least 9,000 dead, 17,900 injured, including civilians, military personnel and members of armed groups,¹⁴⁶ and yet others detained and missing, the conflict in eastern Ukraine is now in its third year and still it grinds on. An armed conflict between the separatist forces of the self-declared Donetsk and Lugansk People's Republics, and the Ukrainian government, escalated in the aftermath of the Ukrainian revolution 2014 (the Maidan movement) and the Crimea annexation by the Russian Federation. The lack of a political solution means that insecurity, humanitarian and protection needs will probably continue in 2016 despite diplomatic efforts and the signing of a cease-fire agreement in February 2015 (Minsk II Agreement).¹⁴⁷ All sides agreed to comply with a renewed ceasefire in September 2015, notably restricting the use of heavy weapons. However, after an improvement of security for some two months, ceasefire violations have resumed; localized exchange of fire again occurs regularly along the front-line.

The humanitarian situation continues to seriously affect the civilian population in eastern Ukraine. In total, OCHA now estimates some 3.2 million persons are affected by the armed conflict and require humanitarian assistance.¹⁴⁸ This includes an estimated 2.7 million people living in non-government controlled area (NGCA) and 800 000 people living in frontline communities along the contact-line (in government controlled areas (GCA) and NGCA). The conflict has caused the displacement of 1.7 million persons,¹⁴⁹ while the civilian infrastructure has suffered considerable destruction.

2. Humanitarian response

The hostilities have generated significant humanitarian needs among displaced and resident communities alike. In many localities affected by hostilities – especially in front-line communities, basic life-supporting services have been disrupted; some civilians have no access to income, little in the way of medicine, food, heating or money. Additionally, the destruction of

¹⁴⁶UN Office for the Coordination of the Humanitarian Affairs, *Global Humanitarian Overview 2016*, at 32, available online at <https://docs.unocha.org/sites/dms/Documents/GHO-2016.pdf> (last visited 29 July 2016).

¹⁴⁷The Minsk II agreement was signed by Ukraine's President Petro Poroshenko and Russia's President Vladimir Putin, together with German Chancellor Angela Merkel and French President Francois Hollande, in Minsk, Belarus on 12 February 2015. It includes two documents. One of them is entitled 'Package of Measures for the Implementation of the Minsk Agreements', was signed by representatives of Ukraine, Russia, the OSCE, and the separatist entities in Donetsk and Luhansk. These measures contain both a political roadmap and a security component for Ukraine.

¹⁴⁸OHCHR, *Report on the Human Rights Situation in Ukraine 16 November 2015 to 15 February 2016*, 15 February 2016, available online at http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf (last visited 28 July 2016).

¹⁴⁹ UNHCR Ukraine, *Ukraine Fact Sheet April 2016*, available online at <http://unhcr.org.ua/attachments/article/317/UKRAINE%20FACTSHEET%20%20APR16%20FINAL.pdf> (last visited 25 July 2016).

water infrastructure in some areas poses a threat to the civilian population. Prices of basic goods have risen due to the weakening of the economy and economic dislocation in conflict-affected areas.

Needs are so great that no one player can address the situation alone. The provision of humanitarian aid requires concerted action by numerous actors. In this context, following the outbreak of the crisis, OCHA established a presence in Ukraine in 2014. By September 2015, OCHA has staff in Kyiv and in field offices in Donetsk, Kramatorsk, Kyiv, Luhansk, Mariupol and Sievierodonetsk. On 21 January 2015, Mr. Neal Walker was designated a Humanitarian Coordinator for Ukraine. The Humanitarian Country Team for Ukraine includes UN organizations, ICRC and local and international NGOs.

The humanitarian response is coordinated within eight clusters currently operational in Ukraine. Shelter, protection, health and nutrition, education, water, sanitation and hygiene, early recovery and livelihoods, food security and logistics cluster partners operate across the country, with particular focus on eastern Ukraine and especially on areas close to the ‘contact line’ and beyond government control.¹⁵⁰

The Protection Cluster led by UNHCR was established in December 2014. UNHCR together with its implementing partners provide assistance to IDPs through protection and legal assistance, policy development and capacity building, the distribution of emergency shelter materials and non-food items. In 2015, 3 sub-clusters were active under the Protection Cluster: Child protection (led by UNICEF), Gender-based violence (led by UN Population Fund) and Mine action (led by UNDP). Additionally, there is an Age and Disability Technical Working Group (chaired by HelpAge International) active under the Protection cluster and a Housing, Land and Property Working Group (chaired by Norwegian Refugee Council), under the umbrella of the Protection and Shelter/Non-food Items clusters.¹⁵¹

As part of the coordinated aid effort, UN agencies have been distributing various relief supplies, including food parcels and non-food items, shelter material, medicines, hygienic and education kits as well as providing access to safe drinking water to meet the needs of people affected by the conflict. Other urgent humanitarian programming includes provision of farming inputs for self-production of food, landmine awareness training for children, and advocacy and actions to protect civilians, IDPs, women, children, the elderly, and minorities.¹⁵²

¹⁵⁰ Ukraine Humanitarian Country Team, *Humanitarian Needs Overview 2016*, at 14, available at https://www.humanitarianresponse.info/en/system/files/documents/files/2016_hno_ukraine_english_13022016.pdf (last visited 29 July 2016).

¹⁵¹ Global Protection Cluster, *Ukraine Protection Cluster Strategy 2016*, at 2, available online at https://www.humanitarianresponse.info/ru/system/files/documents/files/2016_protection_cluster_strategy_0.pdf (last visited 29 July 2016).

¹⁵² UN in Ukraine, *Humanitarian Response in Ukraine*, available online at <http://www.un.org.ua/ua/27-page/3481-humanitarian-response> (last visited 17 July 2016).

UN and the national government launched the Humanitarian Response Plan for Ukraine in 2015 and 2016.¹⁵³ The 2016 plan illustrates the strategic humanitarian response priorities that the UN and its humanitarian partners are planning to carry out in Ukraine, targeting 2.5 million most vulnerable amongst the 3.2 million conflict-affected people who continue to need critical life-saving assistance. Fundraising is continuing as the plan is being implemented.

3. International monitoring

The importance of international monitoring of the situation in Ukraine is also important to emphasize.

First, the OSCE Special Monitoring Mission to Ukraine (SMM) was launched upon the decision of the Permanent Council of OSCE in March 2014 in response to the crisis in and around Ukraine. The Mission is being deployed following a request to the OSCE by Ukraine's government and was agreed by all 57 OSCE's participating States. On 18 February 2016 the mandate of the SMM to Ukraine was extended to 31 March 2017.

The OSCE Special Monitoring Mission to Ukraine monitors and reports on developments on the ground throughout Ukraine, including the implementation of the Minsk Agreements. The Mission provides daily reports on the security situation; spot reports in response to specific incidents; thematic reports on how the conflict affects different aspects of daily life; and fortnightly status reports summarizing the latest facts and figures on the Mission's work. The ultimate goal of the SMM is to help Ukraine to reduce tensions and facilitate dialogue between all the sides.¹⁵⁴

Second, in March 2014, the OHCHR deployed to Ukraine a Human Rights Monitoring Mission to evaluate and report on the human rights situation and to provide support to the Government of Ukraine in the promotion and protection of human rights. The Mission covers human rights developments in the whole country, with human rights monitors based in Kyiv, Donetsk, Odessa, Kharkov, and Lviv. As part of its work, the Mission prepares monthly public reports describing the human rights situation and making recommendations.

B. Assessment of national legal framework against international standards

Internal displacement is a new phenomenon in Ukraine. Until March 2014, the country's

¹⁵³ Ukraine Humanitarian Country Team, *The 2015 Humanitarian Response Plan*, available online at http://www.un.org.ua/images/UKRAINE_HRP_2015_FINAL_1.compressed.pdf (last visited 29 July 2016); *The 2016 Humanitarian Response Plan*, available online at [http://www.un.org.ua/images/documents/3690/2016_hrp_ukraine_english\(1\).pdf](http://www.un.org.ua/images/documents/3690/2016_hrp_ukraine_english(1).pdf) (last visited 29 July 2016).

¹⁵⁴ OSCE, *OSCE SMM to Ukraine: The Facts*, available online at <http://www.osce.org/ukraine-smm/116879?download=true> (last visited 29 July 2016).

experience with forced migration had been limited to relatively small numbers of refugees.¹⁵⁵ The first wave of internal displacement occurred in March 2014 and in two years the official number of registered IDPs has climbed to over 1.7 million.¹⁵⁶ Any government faced with such a rapid and large-scale population displacement would be hard-pressed to respond quickly and effectively.

Since the start of the conflict in eastern Ukraine, the Ukrainian government has enacted a number of laws and regulations applicable to affected displaced persons. The key legislation is the Law ‘On Ensuring of Rights and Freedoms of IDPs’ (Ukrainian IDP Law), the Law of Ukraine ‘On Guaranteeing the Rights and Freedoms of Citizens and on the Legal Regime on the Temporarily Occupied Territory of Ukraine’, and the Cabinet of Ministers Resolution on Approval of the Comprehensive National Programme for Support, Social Adaptation and Reintegration of IDPs (National Programme on IDPs).¹⁵⁷ The Ukrainian legislation on IDPs is undergoing transformation to meet international standards for the protection of IDPs rights. However, it still has a number of disadvantages which raise protection concerns for IDPs in Ukraine today. This chapter on the Ukrainian government’s response is intended to highlight the challenges of IDPs in Ukraine as well as incompliance of national legal framework with international standards.¹⁵⁸

1. Freedom of movement

Principles 14, 15, and 28(1) of the Guiding Principles are meant to ensure that displaced persons are able to move freely during displacement, both to avoid unsafe situations and to undertake necessary travel. Displaced persons, in principle, should be able to choose where to live while displaced and to voluntarily choose whether and how to return. However, restrictions on the right to liberty of movement continue in Ukraine.

On 21 January 2015, the Government of Ukraine introduced the First Deputy of Anti-Terrorism Center under State Security Service Order No. 27 og on the Approval of Temporary Procedures for controlling movements of persons, vehicles and goods along the conflict line

¹⁵⁵ UNHCR Ukraine, *Asylum Statistics in Ukraine*, available online at <http://unhcr.org.ua/en/resources/statistics> (last visited 26 July 2016). In 2014 there were 1,173 asylum seekers in Ukraine, of whom 105 were granted refugee status and 222 were given complementary protection.

¹⁵⁶ UNHCR Ukraine Fact Sheet April 2016, *supra* note 154.

¹⁵⁷ Cabinet of Ministers of Ukraine, Resolution No. 1094, *On Approval of the Comprehensive National Programme for Support, Social Adaptation and Reintegration of Citizens of Ukraine Internally Displaced from the Temporarily Occupied Territory of Ukraine and Anti-Terrorist Operation Conduct Area to Other Regions of Ukraine for the period until 2017*, 16 December 2015.

¹⁵⁸ International standards here refer to the provisions of the Guiding Principles and international human rights treaties ratified by Ukraine (ICESCR, ICCPR, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, Geneva Conventions).

within Donetsk and Lugansk regions (Temporary Order).¹⁵⁹ The Order imposed restrictions on freedom of movement between GCAs and NGCAs. A pass system was created. Currently, movement from GCAs to NGCAs is only authorized through certain pre-identified corridors. These corridors are often closed, at the Government's discretion. On 16 June 2015, the First Deputy of Anti-Terrorism Center under the State Security Service of Ukraine revised the Temporary Order, introducing an electronic pass system, with an on-line application and pass authorization process.¹⁶⁰

Practically, the Temporary Order has had the following impact:

- persons seeking to flee from NGCAs to GCAs face challenges to do so. In particular, where an individual does not have documentation, they have been unable to pass through the checkpoints. The act of applying for a pass from NGCAs has also been challenging;
- checkpoints are often closed by discretion. Persons seeking to cross express frustration about the lack of information regarding which checkpoints are open, and during what hours;
- long queues, sometimes lasting 24 hours, preclude IDPs from crossing the line of contact between GCAs and NGCAs;
- there are no sanitary facilities at or near checkpoints. As a result, persons have been injured by landmines near checkpoints, particularly when they go into fields as a result of the lack of sanitary facilities;
- persons without passes and those seeking to avoid long queues sometimes cross at unauthorized checkpoints. Some have reportedly been killed or injured by landmines;¹⁶¹
- checkpoints themselves have been the targets of shelling;
- multiple cases of family separations have been caused by the lack of necessary documentation;
- the situation of people living in the buffer zone along the contact line is particularly difficult, since there is no special simplified crossing procedure for local residents. In certain locations, people can only reach GCAs via the territory of NGCAs, having to pass through checkpoints.¹⁶²

As such the Temporary Order negatively impacts the freedom of movement of IDPs and people living in the buffer zone. The limitations on freedom of movement must be based on clear

¹⁵⁹ State Security Service Order No. 27 og, *On the Approval of Temporary Procedures for controlling movements of persons, vehicles and goods along the conflict line within Donetsk and Lugansk regions*, 21 January 2015, available online at: http://www.sbu.gov.ua/sbu/control/uk/publish/article;jsessionid=DED87CCD44DEAEC4085EFC041FFAAA4B.app2?art_id=136476&cat_id=135945 (last visited 25 July 2016).

¹⁶⁰ UNHCR Ukraine, *Key Protection Concerns and UNHCR Recommendations*, at 1, available online at http://unhcr.org.ua/attachments/article/1231/2016_02_Key%20Protection%20Concerns%20and%20UNHCR%20Recommendation%20-%20UKRAINE.pdf (last visited 25 July 2016).

¹⁶¹ OCHA, Checkpoint Closure Forces People to Make Dangerous Detours, *Ukraine Humanitarian Bulletin* 9 (2016), at 2.

¹⁶² OSCE Thematic Report, *Protection of Civilians and Their Freedom of Movement in the Donetsk and Luhansk Regions*, at 4, available online at <http://www.osce.org/ukraine-smm/156791?download=true> (last visited 25 July 2016).

legal grounds – which are not provided in this case – and meet the tests of necessity and proportionality. This is why the Temporary Order may be assessed as discriminatory. What is more, the recent OHCHR Report on the Human Rights Situation in Ukraine,¹⁶³ points to the fact that tense situation at the checkpoints constitutes a violation of the fundamental right to freedom of movement. In this respect, OHCHR calls for additional checkpoints to be opened, for them to remain operational to the maximum extent possible, and for simplified procedures to be adopted to facilitate more efficient movement of civilians.¹⁶⁴ Relying on these recommendations, the Ukrainian government should lift the severe restrictions on freedom of movement across the line of contact between GCAs and NGCAs to ensure the freedom of movement.

2. Humanitarian assistance and access to basic services

The revised Temporary Order has also affected the humanitarian situation in NGCAs. Particularly, the prohibition on commercial cargo of food and medicine, and the limited availability of transport corridors for cargos with humanitarian aid, has complicated delivery of food and medicine to NGCAs. Shortages of basic commodities have resulted in an increase in prices on available goods in NGCA.¹⁶⁵

Furthermore, ‘the process of registration’ of humanitarian organizations introduced by *de facto* authorities in NGCAs in June 2015 has complicated the work of humanitarian actors, currently able to operate only if registered. Only UNHCR and OCHA have obtained permission to undertake humanitarian activities in self-proclaimed ‘Luhansk People’s Republic’.[This] was granted on the basis of a letter from the Humanitarian Coordinator in Ukraine to the *de facto* authorities simultaneously sent to Luhansk and Donetsk in August 2015. This permission to operate was only granted temporarily in order to allow continuation of activities while completing the registration process. OCHA continues to work on the registration issue. Lack of access and delivery of humanitarian assistance is of particular concern in self-proclaimed Donetsk People’s Republic where no United Nations agency has so far received registration.¹⁶⁶

Against the backdrop of its restrictions on movement of population and goods to and from NGCAs, the Government is taking steps to facilitate humanitarian operations in affected areas. These include:

- the development of the Law on Humanitarian Aid in Crisis Situations which establishes rapid

¹⁶³ OHCHR, *Report on the Human Rights Situation in Ukraine 16 February to 15 May 2016*, 15 May 2016, para. 84, available online at http://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf (last visited 25 July 2016).

¹⁶⁴ *Ibid*, para. 90.

¹⁶⁵ Ukrainian Helsinki Human Rights Union, *Report on Access to Humanitarian Aid Under Conditions of Armed Conflict in the East of Ukraine*, at 33, available online at http://helsinki.org.ua/wp-content/uploads/2016/06/Pravona-humdopomohu_Engl.pdf (last visited 25 July 2016).

¹⁶⁶ UNHCR Ukraine, *Protection Concerns*, *supra* note 165, at 2-3.

response mechanisms to humanitarian emergencies under general coordination of specially designated governmental bodies;¹⁶⁷

- amendments to the Law on Humanitarian Aid, adopted in July 2015,¹⁶⁸ envisaging decentralized decision making on recognition of cargos below three tons as humanitarian aid; and
- the establishment of logistical centres along the line of contact to provide basic markets and banking services for the civilian population of NGCAs.¹⁶⁹

Overall, people living in NGCAs continue to experience problems in accessing essential services and adequate social assistance. In order to receive social benefits, people have to either relocate or regularly travel to GCAs across the line of contact. Some people (e.g. unemployed adults of working age, families with 1-2 children) have become increasingly vulnerable due to lack of entitlement to social benefits and exclusion from humanitarian assistance schemes.¹⁷⁰

Although basic commodities are generally available in NGCAs, they are reportedly of very low quality. Moreover, the purchasing power of the average person in NGCAs has been steadily decreasing. Those who have no access to sufficient income to provide for themselves and their families are compelled to join the military as one of the few means to receive an income, or to resort to harmful survival strategies.¹⁷¹

The situation of people residing on both sides of the line of contact remains especially dire, as their access to humanitarian and medical aid is impeded due to security reasons and the ban on cargo deliveries. Access to clean water remains problematic in many areas. According to UNICEF,¹⁷² up to 1.3 million people are facing a serious water crisis due to damaged or destroyed water delivery and purification facilities.¹⁷³

In order to address the protection concern discussed above, both the Ukrainian government and *de facto* authorities, according to the UNHCR's recommendations, should allow full and unhindered access of humanitarian agencies to populations in need. All parties and stakeholders involved in the implementation of the Minsk II Agreement should secure delivery, storage, and distribution of humanitarian assistance to those in need on the basis of an international mechanism.¹⁷⁴ Otherwise, any restrictions, including 'registration' demands, may

¹⁶⁷ OCHA, Draft law on 'Humanitarian Assistance in Crisis Situations' Introduced, *Ukraine Humanitarian Bulletin* 9 (2016), at 2.

¹⁶⁸ Law of Ukraine No. 640-VIII, *On Amendments to the Law on Humanitarian Aid Regarding Efficiency of Decision Making*, 16 July 2015, available online at: <http://zakon4.rada.gov.ua/laws/show/640-19> (last visited 25 July 2016).

¹⁶⁹ UNHCR Ukraine, Protection Concerns, *supra* note 165, at 3.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

¹⁷² UNICEF, *A Rapid Wash and Infrastructure Assessment in Non-Government Controlled Areas of Eastern Ukraine*, January 2016, available online at [http://www.unicef.org/ukraine/REACH_report_blue_\(003\).pdf](http://www.unicef.org/ukraine/REACH_report_blue_(003).pdf) (last visited 25 July 2016).

¹⁷³ UNHCR Ukraine, Protection Concerns, *supra* note 165, at 3.

¹⁷⁴ *Ibid.*

amount to violations of the obligation under international humanitarian law to allow and facilitate passage to relief assistance. Finally, the Ukrainian government should end the trade restrictions with NGCAs in eastern Ukraine.

3. *Economic and social rights*

(a) Official IDPs registration in Ukraine

Responding to an internal displacement situation – whether to provide emergency assistance or find solutions – requires knowledge of who needs protection and from what. There is no single correct way to collect accurate information on internal displacement, but there are a number of approaches for assessing the number, characteristics, needs and capacities of IDPs that may be helpful as a starting point. The most commonly used processes today are IDP registration, profiling and needs assessments.

The Framework for National Responsibility on Internal Displacement¹⁷⁵ states that government authorities bear primary responsibility for compiling information on IDPs. While there is no specification that this must be IDP registration, Ukraine did opt for the more formal process of IDP registration because it is directly linked to social benefits and pension payments. The Ukrainian IDP Law created a national framework for a system of IDP registration in Ukraine.

It is important to make the distinction between different understandings of IDP registration. There can be confusion around what IDP registration is as different actors use the term to mean different things. Some consider IDP registration as a process to register beneficiaries for programming. This is more accurately called beneficiary registration that includes IDPs. Such exercises which are usually done by humanitarian organizations for programming purposes are distinct from IDP registration as a legal administrative procedure carried out by the state or a mandated organization.

There are significant challenges with IDP registration in Ukraine that is evidenced by the following. As of February 2016, the Ukrainian Ministry of Social Policy registered 1 714 719 IDPs throughout Ukraine.¹⁷⁶ While the total number of registered IDPs is repeatedly referred to with regard to the humanitarian needs in Ukraine, it is also well-accepted by all actors that this figure is inaccurate. According to the Humanitarian Needs Overview¹⁷⁷, the total number of registered IDPs is made up of 61 percent pensioners, 12 percent children, and 4 percent disabled people. This seems terribly off-balance, given the fact that only 16 percent of Ukraine's

¹⁷⁵ Framework for National Responsibility on Internal Displacement, *supra* note 51, Step 3 Data Collection.

¹⁷⁶ UNHCR Ukraine Fact Sheet, *supra* note 154.

¹⁷⁷ Ukraine Humanitarian Needs Overview, *supra* note 155.

population is over the age of 65. The reason for that is that pensioners are registering with the Ministry for the 'sole purpose' of securing their pension benefits. This makes sense because displaced people everywhere are much more likely to register with the authorities when there is a benefit in doing so –for example, to receive social benefits or housing or to enroll their children in new schools. Put it differently, the reality is that there is no clear understanding of the number of individuals displaced or affected by displacement and this reliance on the official IDP registration statistics is somewhat misleading.

The phenomenon is explained by the fact that the officially reported number of IDPs comprises only those IDPs who have registered with the Ministry of Social Policy. It does not include anyone who did not complete the registration, such as those who already secured employment in the state-controlled area, and those who fear army conscription or persecution of family members who did not flee. Furthermore, the recorded numbers had only applied to citizens of Ukraine until the beginning of the year 2016, as foreigners and stateless persons could not be granted IDP status due to the restricted definition of IDP contained in article 1 of the Ukrainian IDP Law as it will be explained below.

The unreliable IDP registration statistics entails protection risks. If humanitarian aid eligibility is entirely contingent on registration, that may lead to bureaucratic delays in its distribution to displaced populations with urgent humanitarian needs because they have to await official recognition as IDPs.¹⁷⁸ Moreover, if benefits beyond those initially envisioned depend on IDP registration, then it would arbitrarily deny IDPs access to those benefits in cases in which they did not originally register. For example, when rights related to property restitution later become available to those who registered for IDP status initially related to food distribution. It is important, therefore, to keep in mind the timeline as registration today has an effect when thinking about durable solutions in the future.

(b) The definition of IDPs under the Ukrainian IDP Law

The Ukrainian IDP Law was adopted on 20 October 2014. The law is deemed to provide a comprehensive framework for the protection of IDPs – facilitating access to essential rights, providing protection against discrimination and forcible return, and ensuring assistance in any voluntary returns. The IDP Law simplifies access to different social and economic services, including social and unemployment benefits and residence registration.

The first article of the Ukrainian IDP Law defines that 'an internally displaced person is a citizen of Ukraine, a foreigner or a stateless person staying on territory of Ukraine on legal

¹⁷⁸Protection Cluster Ukraine, *Update on IDP Registration*, August 2015, at 2, available online at https://www.humanitarianresponse.info/ru/system/files/documents/files/ukraine_pc_registration_update_august_en_0.pdf (last visited 26 July 2016).

grounds and being entitled to permanent residence in the territory of Ukraine, who was forced to leave or abandon his/her residence place as a result of or in order to avoid negative impact of armed conflict, temporary occupation, situations of generalized violence, mass violations of human rights and disasters of natural or human-made origin'.¹⁷⁹

This definition is not the original one that appeared in the Ukrainian IDP Law as of its adoption. As a result of advocacy by international organizations and civil society, including UNHCR, in December 2015 amendments to the Ukrainian IDP Law were adopted by the Parliament and entered into force in January 2016.¹⁸⁰ These amendments extended the definition of an IDP to include stateless persons and foreigners with permanent residence in Ukraine. They also expanded the type of documentary evidence required to establish IDP status. Previously, this was evidenced through passports and residency permits. Expanding the sources of evidence that can be provided as proof of internal displacement is important because many IDPs have lost or are unable to produce their passports and residence permits. Of particular relevance to rights associated with IDP status is unlimited validity of the IDP certificate that was previously only valid for six months.

At the same time, it is of the note in this context that Principle 20 of the Guiding Principles on Internal Displacement envisages the right to be recognised as a person before the law¹⁸¹ that is corresponding directly with the international human rights framework (article 6 UDHR and article 16 ICCPR). However, the situation in Ukraine evidences that, during the period of time when people were actively fleeing the conflict zone, the national IDP definition was narrower than the description in the Guiding Principles as there were time limitation and stateless persons and migrants were excluded. Moreover, the application of the Ukrainian IDP Law in practice is encumbered since IDPs who are located in active conflict areas are unable to travel to register or renew their registration and thus remain formally ineligible for assistance.

Also, and of particular concern, the IDP definition in Ukrainian IDP Law, even with the 2016 amendments, still does not contain a requirement that the movement take place within national borders. As such, the IDP definition provided in Ukraine's law would conceivably also

¹⁷⁹ Law of Ukraine № 1706-VII, *On Ensuring of Rights and Freedoms of Internally Displaced Persons*, 20 October 2014, available at <http://zakon3.rada.gov.ua/laws/show/1706-18/print1461440894838797> (last visited 26 July 2016).

¹⁸⁰ Law of Ukraine 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, available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54093 (last visited 26 July 2016).

¹⁸¹ UN Guiding Principles on Internal Displacement, *supra* note 3, Principle 20:

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

encompass refugees and asylum-seekers who, by definition, are outside of their country of origin and have specific legal protection under international refugee law. Amendments proposed to the 2014 Ukrainian IDP Law unfortunately did not seek to correct this problem in the IDP definition. Correcting the IDP definition to specify that the movement of IDPs occurs within 'internationally recognized state borders' remains essential in order for national legislation to be in line with the international concept and definition of IDPs contained in the Guiding Principles.

Finally, although not evident in the IDP definition, Ukraine's regulations on registration of IDPs¹⁸² have the effect of creating a legal IDP status. The regulations make it necessary for all IDPs to register as IDPs and obtain an IDP certificate, even those who do not require humanitarian assistance but simply want to enjoy their basic rights and access social services. Such provisions in national legislation fall short of international principles of non-discrimination, in particular encapsulated in the Guiding Principles (Principle 1).

(c) Eligibility to social entitlements

i) Social assistance and pension payments

The Ukrainian IDP Law declares in Article 14 that IDPs shall enjoy the same rights and freedoms as other citizens of Ukraine, foreigners and stateless persons who have permanent residence in Ukraine; discrimination of IDPs on the basis of their displacement is prohibited.¹⁸³ At the same time, however, the Ukrainian IDP Law itself contains provisions that are discriminatory towards IDPs and results in their stigmatization. First and foremost, it is the norm in Article 7 of the Ukrainian IDP Law providing that the enjoyment of some rights is guaranteed to registered IDPs only, and IDPs have some specific obligations that are not typical for other citizens, e.g. the obligation to not be absent for more than 60 days from their registered new place of residence (Article 12).¹⁸⁴

Additional regulations that are discriminatory towards IDPs appear in by-laws. For example, on 16 February 2016, the Cabinet of Ministers announced a residence verification process for IDPs as a condition for entitlements and benefit payments, and instructed the Ministry of Social Policy, its regional offices and local departments to suspend all social payments for IDPs, pending verification of their presence in GCAs, with the view to combating fraud.¹⁸⁵ Previous regulations introduced in November 2014 linked eligibility to social

¹⁸² Cabinet of Ministers of Ukraine Resolution No. 509, *On Registration of Internally Displaced Persons*, 1 October 2014, para. 8.

¹⁸³ The Ukrainian IDP Law, *supra* note 184, Article 14.

¹⁸⁴ *Ibid.*

¹⁸⁵ Protection Cluster Ukraine, *Suspension of Social and Pension Payments to IDPs*, March 2016, available online at http://reliefweb.int/sites/reliefweb.int/files/resources/18_march_2016_suspension_of_payments_of_social_benefits_to_idps.pdf (last visited 26 July 2016).

entitlements (pensions, disability benefits, maternity leave and assistance to single parents and families with more than three children), to IDP registration. As a result, persons internally displaced but not registered as an IDP are denied entitlements.

Following the Cabinet of Ministers' decision, the State Security Service provided regional administrations with lists of individuals, recommending that their social entitlements be revoked pending verification. OHCHR reviewed such lists and concluded they have been developed based on information from the State Security Service database of individuals who received permits to cross the contact line.¹⁸⁶ At the same time, according to international human rights law,¹⁸⁷ the usage of personal data must not be discriminatory. Furthermore, even in the context of fighting terrorism, data collection and processing should be transparent and proportionate to the aim for which the collection and processing are foreseen. Such misuse of information about the people who have applied for permits has adversely affected their ability to enjoy their economic and social rights and raises concerns as to how such information may be further used.¹⁸⁸

Another point of concern is that the new regulations have had a particular impact on older persons and people with disabilities whose limited mobility impedes their access to social protection departments and pension funds to verify whether they have been included in the lists or to prove their residence address. The monitoring results¹⁸⁹ revealed that the majority of IDPs included on the suspension lists have not changed their place of residence after initial displacement and that they were unaware of the reason why they were included on the list. As a result, vulnerable IDPs have suffered from groundless suspension of their social entitlements and pensions without prior notification, depriving some of any means and exposing them to impoverishment.¹⁹⁰

Additional risks relate to a new control over social payments to IDPs according to their place of residence, a highly problematic provision. On 8 June 2016, the Cabinet of Ministers adopted Resolution no. 365, 'On Procedure of Controlling Transfers of Social Payments to IDPs at Their Place of Residence' (Resolution 356). This resolution includes the establishment of 'commissions' for assigning or reinstating social payments, including pensions, composed on the

¹⁸⁶ OHCHR, Report on the Human Rights Situation in Ukraine, *supra* note 153, para. 134.

¹⁸⁷ UN Human Rights Committee, *ICCPR General Comment No. 16: Article 17 (The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation)*, UN Doc. HRI/GEN/1/Rev.9 (Vol.1), 8 April 1988, available online at ccprcentre.org/page/view/general_comments/27798 (last visited 26 July 2016).

¹⁸⁸ OHCHR, Report on the Human Rights Situation in Ukraine, *supra* note 153, paras. 134-136.

¹⁸⁹ Right to Protection in Partnership with HIAS, *Monitoring Report as of the Suspension of IDP Certificates, Social Payments and Pension Payments for IDPs in Kharkiv, Donetsk, Luhansk, Zaporizhzhia and Dnipropetrovsk regions*, available online at http://r2p.org.ua/wp-content/uploads/2016/06/Monitoring_suspension_of_IDP_certificates1.pdf (last visited 26 July 2016).

¹⁹⁰ OHCHR, Report on the Human Rights Situation in Ukraine, *supra* note 153, paras. 134-136.

basis of local administrations; it stipulates that social benefits may only be applied for at the place of IDP registration. Social protection authorities will initiate verification of personal residency data order to assign or reinstate social benefits. Reasons for denial of social benefits include absence of the IDP from the place of residence indicated in the application for reinstatement of benefits. Where a person is absent from the place of residence, they will be sent a letter requesting them to go to a Department of Social Policy office within three days. Simultaneously, the State Border Guard Service will provide the Department of Social Policy with data on the beneficiary's movement to NGCAs or abroad. Information received from government agencies can lead to cancellation of the IDP certificate according to Article 12 of the Ukrainian Law on IDPs.¹⁹¹ In practical terms, it means that IDPs who are not found to be living at their declared place of residence are de-registered and cease to receive any support from the state, including pensions and regular social welfare. If the IDP certificate is cancelled, IDPs will not be able to receive their benefits sooner than in six months after suspension, in compliance with the required procedures.

The implementation of the Resolution 365 will lead to discrimination of IDPs in Ukraine comparatively to other individuals, violation of the IDPs' right to freedom of movement, right to privacy and family life, and right to adequate standard of living. Based on the protection principles described in Chapter 2, state authorities must guarantee unrestricted access to benefits and rights to all displaced persons, regardless of registration status. The rights of IDPs, and the responsibilities of national authorities towards them, are not affected by their location or their status in national legislation. Unregistered displaced persons are among the most vulnerable.

Despite this, Ukraine violates domestic laws by depriving its citizens of the statutory benefits to which they are legally entitled to. This, in turn, is a violation of Article 46 of the Ukrainian Constitution which guarantees citizens Ukraine the right to social security and an adequate standard of living, as well as a violation of international standards including the Guiding Principles. The Government should de-link regular social welfare entitlements, including pensions, from IDP status. Every effort should be made to ensure that pensions and state social assistance are accessible for all Ukrainians, without geographic distinctions.

ii) Access to assistance for children

The procedure for registration of IDPs in Ukraine also causes protection concerns for children as explained below.

First, 'unaccompanied or separated IDP children who travel to GCAs with family

¹⁹¹ UNHCR Ukraine, *UNHCR Operational Update 11 June – 15 July 2016*, available online at <http://reporting.unhcr.org/sites/default/files/regionalupdates/UNHCR%20Operational%20Update%20on%20the%20Ukraine%20Situation%20-%2011JUN-15JUL16.pdf> (last visited 26 July 2016).

members other than their legal guardians have not been able to register as IDPs. As a result, unaccompanied and separated displaced children are unable to access assistance. To establish legal guardianship and gain access to IDP registration, accompanying adults or caregivers have been required to present an attestation written by the parents or a legal guardian, and certified by a notary. However, notary offices are no longer functional in NGCAs, making this impossible.¹⁹²

On 18 December 2015, the Cabinet of Ministers Resolution No. 1014¹⁹³ came into effect. This resolution makes it easier for other adults who may be accompanying the IDP child (e.g., grandparents, adult siblings, step-parents) to apply for assistance. The amendment also allows temporary caregivers such as distant relatives or neighbours to apply for assistance on behalf of the child, where there is a notarized application from the parents of the child. When no notarized application is available, local government children's services can apply on behalf of the child.¹⁹⁴ Now the Ukrainian government should ensure strict implementation of these procedures to facilitate registration and documentation of unaccompanied and separated children.

Second, the civil registration system has not been functioning in NGCAs. Therefore, persons need to go to GCAs to have new identification and administrative documents issued. In June – August 2015, UNHCR monitoring noted growing instances of denial of primarily birth registration by Ukrainian authorities to newborn children of NGCAs. An amendment to the Civil Procedural Code of Ukraine that would expedite judicial review of civil registration of birth in NGCAs, is currently pending adoption by Parliament. However, the requirement for persons from NGCAs of eastern Ukraine to use mandatory judicial procedures to obtain civil documentation is cumbersome and time-consuming, creating additional protection risks. Therefore, as a matter of urgency, the Ukrainian government should develop an administrative procedure for civil registrations, rather than a cumbersome judicial mechanism. Persistent gaps in the procedural framework will eventually result in a growing number of undocumented children, potentially leading to a risk of statelessness.¹⁹⁵

(d) Basic shelter and adequate housing

¹⁹²UNHCR Ukraine, Protection Concerns, *supra* note 165, at 5.

¹⁹³Cabinet of Ministers of Ukraine Resolution No. 1014, *On Amendments to the Procedures for Provision of Monthly Targeted Assistance to Internally Displaced Persons to Cover Housing Costs, Including Utilities*, 9 December 2015, available online at <http://www.kmu.gov.ua/control/ru/cardnpd?docid=248704342> (last visited 26 July 2016).

¹⁹⁴Protection Cluster Ukraine, *Update on IDP Registration*, *supra* note 183

¹⁹⁵UNHCR Ukraine, *Key Messages on Internal Displacement*, February 2016, available online at http://unhcr.org.ua/attachments/article/1231/2016_02_UNHCR%20KEY%20MESSAGES%20ON%20INTERNAL%20DISPLACEMENT%20IN%20UKRAINE.pdf (last visited 26 July 2016).

Based on established standards of international law, Principle 18 of the Guiding Principles affirms the right of every person, including IDPs, to an adequate standard of living and specifies that, at minimum, regardless of the circumstances and without discrimination, authorities must provide and ensure safe access to basic shelter and housing for IDPs.¹⁹⁶ The Pinheiro Principles, also contain specific reference to the right to adequate housing and request that states take positive measures to alleviate the difficulties faced by refugees and IDPs living in inadequate shelter.¹⁹⁷

'Adequate housing' is defined as housing which affords its occupants legal security of tenure, especially in the form of protection against forced evictions; available services and infrastructure (access to water, energy for cooking, heating, and lighting); compliance with safety standards aimed at minimizing damage from future disasters, etc.¹⁹⁸

In a trend observed since September 2015, IDPs have gradually continued returning to their homes in NGCAs. However, the ongoing presence of military forces in civilian areas and indiscriminate shelling continue to be the main factors endangering civilians, and affects their ability to access housing, land and property. IDPs unable to return to their homes must be given access to basic shelter and housing during displacement.

According to the Ukrainian IDP Law, IDPs have the right to be provided by state executive bodies and local governments free temporary accommodation for a period of up to six months from the date of registration as an IDP; for large families, persons with disabilities and elderly persons this period may be extended.¹⁹⁹

In practice, only 3-5% of the IDPs are receiving housing assistance in collective centres. The available accommodation outside of big cities has often been ill-suited for the needs of people with disabilities and for long-term displacement. Most of the areas in eastern Ukraine with high concentration of IDPs have exhausted their housing absorption capacity. Moreover, the list of available temporary accommodation is not made public, nor is there a procedure for obtaining such accommodation.

Moreover, IDPs face discrimination in access to housing. There are numerous reports about the reluctance of landlords to rent to IDPs and about the increase of rental prices in areas of dense concentration of IDPs. Moreover, there is no specially empowered body delegated with responsibility for IDP housing issues. IDPs are not listed as a category of persons with the right to social housing. Likewise, there is a lack of state financial and investment support for

¹⁹⁶ Guiding Principles, *supra* note 3, Principles 18(1) and 2(b).

¹⁹⁷ Pinheiro Principles, *supra* note 118, Principle 8.

¹⁹⁸ OHCHR, *CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, UN Doc. E/1992/23, 13 December 1991, paras. 8(a)-(g), available online at <http://www.refworld.org/docid/47a7079a1.html> (last visited 27 July 2016).

¹⁹⁹ The Ukrainian IDP Law, *supra* note 184, Article 9.

individual housing construction and purchase of housing for IDPs. In this respect UNHCR has urged Ukrainian authorities to properly address housing needs in order to prevent further displacement and secondary movements.²⁰⁰

(e) Property and possession

Recovery of housing, land, property and possession left behind as a result of displacement is a right of IDPs. It also is an essential element for the achievement of durable solutions to internal displacement. However, in Ukraine, complicating factors for realizing this right include loss or destruction of housing, land, and property, the appropriation or occupation of this property by others during IDPs' absence, and double registration of property rights. As regards the latter, on 3 June 2015, the Council of Ministers of self-proclaimed 'Donetsk People's Republic', approved Temporary Order No. 10-29 that provides procedures for the mandatory re-registration of property rights on its territory. Property that is not re-registered with *de facto* authorities may be considered 'ownerless' and therefore liable to expropriation.²⁰¹

These developments mean that parallel property registration systems in NGCAs has been introduced. As a result, IDPs may need to return to NGCAs, at least temporarily, to re-register their immovable property in order to secure their rights. However, some IDPs may be unable to do this for a variety of reasons, ranging from security concerns to lack of financial means. It undermines respect for the property rights of IDPs which is one of the Guiding Principles as well as a norm of customary international law.²⁰²

As displacement becomes protracted, suitable housing must be provided that ensures that IDPs can live in dignity in accommodation appropriate to their needs. The Ukrainian government is unable to secure such accommodation for everyone who is in need, especially for a long-term period. For this reason, IDPs openly voice demands in regard to property restitution, to enable them to start a normal life.

What is relevant in this respect is the Guiding Principles and the Pinheiro Principles that both affirm the rights of IDPs to recovery of property or, where this is factually impossible, compensation.²⁰³ The Pinheiro Principle 12 is devoted to issues concerning national procedures, institutions and mechanisms, providing guidance including that 'states should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution

²⁰⁰ UNHCR Ukraine, Key Messages on Internal Displacement, *supra* note 200.

²⁰¹ UNHCR Ukraine, Protection Concerns, *supra* note 165, at 9.

²⁰² Guiding Principles, *supra* note 3, Principle 21(3); ICRC, Customary International Humanitarian Law, *supra* note 72, Rule No. 133: 'Property Rights of Displaced Persons', at 472.

²⁰³ Guiding Principles, *supra* note 3, Principle 29(2); Pinheiro Principles, *supra* note 118, Principles 2, 5–7, and 9–10.

claims’.²⁰⁴ States are to ‘develop a legal framework for protecting the right to housing, land, and property restitution’.²⁰⁵

The situation in Ukraine relating the compensation of damages to housing of IDPs is a complicated one due to various reasons, including an inadequate legal framework. To be more precise, the Ukrainian IDP Law does not contain provisions for the protection, recovery and compensation for loss of property. While the provisions of the Civil Code of Ukraine guaranteeing compensation of damages for property destroyed/damaged in anti-terrorist operations are practically suspended by the Law of Ukraine ‘On the Fight Against Terrorism’ which provides that the compensation for such damage ‘shall be regulated by a special law’²⁰⁶ which is yet to be drafted. Finally, there are still no mechanisms for assessment of conflict-related damages.

In such situation, there is an acute need to adopt a legal framework and establish independent, transparent and non-discriminatory procedures and mechanisms for the restitution of housing, land, and property. In the meantime, the local residents of Donetsk and Luhansk regions have attempted to seek compensation from the Ukrainian and Russian authorities for their houses ruined in shelling in eastern Ukraine in the European Court of Human Rights (ECHR).²⁰⁷ Up to now there are only three applications that have been ruled on by the court, and they were unsuccessful. In particular, in July 2016, the ECHR has declared that complaints concerning the shelling of homes in eastern Ukraine are inadmissible due to the lack of evidence.²⁰⁸ The complaints contained photo evidence, and OSCE reports that confirmed the fact of attacks. Still, ECHR referred that the applicants have failed to provide ‘sufficient *prima facie* evidence of ownership of or residence on property’.²⁰⁹

4. National focal point responsible for IDPs

Experience around the world has shown that for a state to meet its responsibilities in situations of internal displacement, it is essential for there to be a clear indication of exactly which governmental actors are responsible. Although the Guiding Principles do not specify the

²⁰⁴*Ibid*, Principle 12.

²⁰⁵*Ibid*, Principle 18(1).

²⁰⁶ Law of Ukraine No. 638-IV, *On the Fight Against Terrorism*, 20 March 2003, Article 19, available online at <http://zakon5.rada.gov.ua/laws/show/638-15/print1461534016494260> (last visited 28 July 2016).

²⁰⁷ Overall, approximately 3,000 individual cases related to the events in Crimea or hostilities in eastern Ukraine are currently pending before the court.

²⁰⁸ *Lisnyy and Others v. Ukraine and Russia*, European Court of Human Rights, nos. 5355/15, 44913/15 and 50853/15, (the text of ruling is not available online yet).

²⁰⁹ Human Rights Europe, *Ukraine and Russia: Court Set for Judgement in Complaint Against Shelling of Donetsk and Lugansk Region Homes*, available online at <http://www.humanrightseurope.org/2016/07/ukraine-and-russia-court-set-for-judgement-in-complaint-against-shelling-of-donetsk-and-lugansk-region-homes/> (last visited 28 July 2016).

institutional modalities through which authorities should discharge their responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction, the Framework for National Responsibility provides guidance. Indeed, one of the twelve benchmarks of national responsibility outlined in the Framework is that States should designate a focal point institution for coordinating the government's response to internal displacement as well as for coordinating with local and international partners.²¹⁰

The Ukrainian IDP Law does not designate a single institutional focal point for IDP issues, but rather distributes certain specific responsibilities among various state institutions. Legislation does not establish a clear coordination mechanism for joint action of these agencies. The main disadvantage of subsequently established State Agency on the Reconstruction of Donbass is that the scope of the agency's responsibilities does not include the protection of IDPs and other affected populations.

To illustrate positive developments, with the support of OHCHR the Action Plan for Implementation of the National Strategy in the Field of Human Rights was developed and adopted by the Cabinet of Ministers on 23 November 2015 (Action Plan). It stipulates that the Cabinet of Ministers of Ukraine is responsible for creating a special state body for addressing the situation of IDPs - the Ministry of Temporary Occupied Territories and IDPs of Ukraine.²¹¹ The Action Plan specifies that the functions of this body shall include continuous monitoring of observance of constitutional rights and freedoms of IDPs and implementation of international commitments of Ukraine regarding IDPs; and cessation and prevention of violations of rights of IDPs.

Despite this advancement, the State Budget for 2016 does not envisage any funds for creation of the focal point institution on IDPs, nor for central executive bodies to fulfil their responsibilities regarding to ensuring IDPs' rights. It means that the above-mentioned provisions are not enough for supporting the work of the Ministry of Temporary Occupied Territories and IDPs of Ukraine. In other words, more than two years after the beginning of internal displacement in Ukraine, the country is still lacking a governmental body with a primary responsibility to coordinate national efforts on IDPs due to the lack of political will and shortage of financial resources.

Also, it should be noted that there is a lack of harmonized and whole-of-government approach to issues of displacement. On 16 December 2015, the Cabinet of Ministers adopted the

²¹⁰ Elizabeth Ferris et al., *Off to a Shaky Start: Ukrainian Government Responses to Internally Displaced Persons*, Brookings-LSE Project on Internal Displacement (2015), at 22-23, available online at <http://www.brookings.edu/~media/research/files/reports/2015/05/ukraine-internal-displacement/ukrainian-govt-responses-to-internal-displacement-may-2015.pdf> (last visited 27 July 2016).

²¹¹ Cabinet of Ministers of Ukraine Resolution No. 1393, *Action Plan on Implementation of the National Strategy in the Field of Human Rights Until 2020*, 23 November 2015, para. 120.

National Programme on IDPs.²¹² This programme provides a framework for the government's response to internal displacement, including ensuring that durable solutions are available. However, the government's capacity to implement the National Programme on IDPs is questioned, given the lack of any budgetary allocation for its implementation.

To sum up, during the period of time when Ukraine is experiencing detrimental effects of internal displacement, its legal and regulatory framework on IDPs underwent some significant changes. However, the registration of IDPs has remained problematic and cause limitations on eligibility to social entitlements, including pensions. The current system of accommodating IDPs does not meet an adequate standard of housing assistance. The Ukrainian IDP Law still lacks any provisions relating to IDPs' rights to property left behind as a result of displacement. Recently designated ministry with the authority to oversee the protection of IDPs and persons in the conflict area has not been provided with sufficient resources from the government to ensure its functionality. Therefore, it is incumbent on the government of Ukraine to bring its national legislation into compliance with international standards on the protection of IDPs, and thus to ensure respect for human rights in accordance with pertinent obligations.

²¹² Cabinet of Ministers of Ukraine, *Resolution No. 1094 on National Programme on IDPs*, *supra* note 162.

6. Conclusion

In recent years, internal displacement has emerged as one of the most pressing humanitarian, human rights and political issues facing the international community. In this connection, the nature of the response to it has become far more significant.

IDPs immediately become dependent on others for basic needs such as shelter and food, and experience insecurity. This negates the most fundamental human rights, particularly social and economic rights. Displacement also significantly disrupts gender norms. Taken together, these factors create special needs that IDPs have by virtue of their displacement. As a result, a developed regime for protecting IDPs worldwide is required.

IDPs are forcibly uprooted population – both citizens and habitual residents – in so far as they have been forced to flee or to leave their homes or places of habitual residence. Unlike refugees, the internally displaced have not left the country whose citizens they normally are. As such, they remain entitled to protection and assistance by their government in accordance with the pertinent norms of both national and international human rights law. It is determined by the dictates of state sovereignty that the primary duty and responsibility for providing protection and assistance to IDPs – through the development of national capacities – rests with their government. UNHCR and other international organizations also rally to a crisis of internal displacement. However, their role is complementary to sovereign responsibilities.

For IDPs, unlike for refugees, there does not exist an international convention specific to their plight. Despite this fact, internally displaced persons are protected by various bodies of law, including, most notably, human rights law and international humanitarian law. These two separate regimes converge to a large extent in purely internal armed conflict situations and they reinforce each other.

The Guiding Principles on Internal Displacement broke new ground in international law concerning the protection of IDPs. Even though they as a whole are non-binding, the Guiding Principles found the wide acceptance. It is explained by the fact that they were drafted in a way that carefully restate existing international law with a view to making more general norms applicable to the specific situation of internal displacement. The norms of the Guiding Principles are directed to prevent displacement of civilians in the first place and to ensure their protection during displacement in the second place, and, finally, after displacement i.e. in the setting of resettlement, reintegration and return.

One of the major milestones in the IDPs' protection framework is that encapsulated in the solid international rules on non-discrimination and equality. Under the Guiding Principles, IDPs are entitled to enjoy in full equality the same rights and freedoms as other persons in their country and shall not be discriminated against in the enjoyment of any rights and freedoms on

the ground that they are displaced. It does not prevent certain particularly vulnerable IDPs, e.g. women, children and elderly persons, to be provided with specific protection.

The Guiding Principles recognize the duty of national authorities to guarantee the rights to move freely and to choose one's place of residence for IDPs throughout all phases of displacement; to facilitate the issuance of IDPs' personal documentation; to provide humanitarian assistance; and to assist IDPs in recovering their property or, if this is not possible, obtaining compensation for property and possessions which they were disposed of upon their displacement. For IDPs, the rights corresponding to the listed state's obligations and other human rights are an absolute necessity to participate in social, political, and economic life and to create conditions suitable for the achievement of durable solutions.

It is also noteworthy that IDPs are free to choose between return, local integration, or resettlement. Although these three durable solutions are long-accepted, the lessons learnt through the decades highlight their inadequacy. It is arguably now the norm that the world's majority of IDPs live in situations of protracted displacement when the core problems remain unsatisfactorily resolved.

International efforts at assistance and protection for IDPs do not aim to replace national protection, but rather to reinforce it. Thus, no organization has been given a global mandate for IDPs when their government cannot or is not willing to ensure their protection and assistance. Instead, international action on behalf of the internally displaced is *ad hoc*.

Until 2005, it was unpredictable due to a lack of clear agency responsibilities for some sectors, especially in the areas of protection and human rights. Recognizing this, the IASC launched a reform process aimed at improving the effectiveness of humanitarian response. The global cluster leads in eleven sectors of activity were designated. UNHCR was tasked to lead the response in the areas of protection, camp coordination and management, and emergency shelter.

A cluster-based response is led by the humanitarian coordinator in the country concerned, in support of the host government. Under the cluster system, overall accountability for coordination and delivery of services on the ground rests with the humanitarian coordinator.

Ukraine is one of the recent examples of internal displacement caused by armed conflict. Given the continuing hostilities and the widespread destruction of housing and infrastructure in Donetsk and Lugansk regions, displacement in Ukraine is likely to be protracted. The protection of IDPs fleeing from insecure areas is primarily the responsibility of the Ukrainian government that is widely supported by UN agencies and other actors in addressing the plight of IDPs. This thesis has taken a closer look at the national response to internal displacement in Ukraine and assessed its compatibility with international standards.

During the years 2014-2016, the Ukrainian legal and regulatory framework on IDPs underwent some significant changes directly affecting the human rights of IDPs. Nevertheless, the Ukrainian government's approach to internal displacement still falls short of international protection standards and benchmarks of the National Framework on Internal Displacement. However, it is important to recognize that no government in the world has fully exercised its responsibilities toward IDPs, particularly not in the first years in which large-scale displacement has occurred.

To answer the question whether Ukraine has proceeded in its policy and approach to IDPs, it is relevant to turn back to OHCHR reports on the human rights situation in Ukraine issued in 2014-2015 and compare it to the latest reports of 2016. The former indicated that the national response to new displacement over the reporting period was inadequate, the government was unprepared, and the response was largely dependent on volunteers and humanitarian organizations, except for the Ukrainian national human rights institutions that were already functioning fairly well.²¹³ While, in 2016, OHCHR observed that a number of steps were taken by the government of Ukraine to advance and strengthen human rights promotion and protection through policy documents and legal acts.²¹⁴ Nevertheless, only the full implementation of the Minsk II Agreements on ceasefire will result in conditions allowing due respect for international human rights norms.²¹⁵

Although there have been attempts to have peace talks with separatist leaders of Donetsk and Lugansk, there have been few improvements in setting a peace. Despite the persistent conflict in Eastern Ukraine, the government has to fulfil its responsibility to IDPs. For now, the transformation of the National Programme on IDPs into action is at the forefront of the Ukrainian government's agenda. This would allow to bring about meaningful change in the protection of human rights and ensure compliance with international human rights and humanitarian law commitments undertaken by Ukraine.

The Ukrainian government's most urgent protection priorities as regards IDPs looking forward into 2016 should be the following: 1) activate the Ministry of Temporary Occupied Territories and IDPs of Ukraine as a focal point within the government for IDPs' issues; 2) allow people to move freely along the conflict line; 3) guarantee unrestricted access to benefits and rights to all displaced persons, regardless of registration status; and 4) properly address housing needs in order to prevent further displacement and secondary movements. These priorities should be paid due regard in order to shift the focus of national IDP policies and programmes on

²¹³ OHCHR, *Report on the Human Rights Situation in Ukraine 15 July 2014*, 15 July 2014, para. 196, available online at http://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15July_2014.pdf (last visited 28 July 2016).

²¹⁴ OHCHR, *Report on the Human Rights Situation in Ukraine*, 15 February 2016, *supra* note 153, para. 201.

²¹⁵ OHCHR, *Report on the Human Rights Situation in Ukraine*, 15 May 2016, *supra* note 168, para. 203.

finding durable solutions and upholding human rights obligations of Ukraine.

7. Bibliography

A. United Nations Materials

Report of the Representative of the Secretary-General on IDPs to the UN Commission on Human Rights at its Forty-Ninth Session, *Comprehensive Study Prepared by Mr. Francis M. Deng, Representative of the Secretary-General on the Human Rights Issues Related to Internally Displaced Persons, Pursuant to Commission on Human Rights Resolution 1992/73*, UN Doc. E/CN.4/1993/35, 21 January 1993.

Report of the Representative of the Secretary-General on Internally Displaced Persons, *Compilation and Analysis of Legal Norms*, UN Doc. E/CN.4/1996/52/Add.2, 5 December 1995, available online at http://id.cdint.org/content/documents/Compilation_and_analysis_of_legal_norms.pdf.

Report of the Secretary-General to the United Nations General Assembly, *Renewing the United Nations: A Programme for Reform*, UN doc. A/51/950.

UN Commission on Human Rights Resolution, *Internally Displaced Persons*, E/CN.4/RES/1992/73, 5 March 1992, available online at http://www.ohchr.org/Documents/Issues/IDPersons/E%20CN.4_RES_1992_73.pdf.

UN Commission on Human Rights Resolution, *Internally Displaced Persons*, E/CN.4/RES/2005/46, 29 April 2005.

UN Commission on Human Rights, *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.1, 11 February 1998, available online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement>.

UN General Assembly Resolution, *Assistance to Sudanese Refugees Returning from Abroad*, A/RES/2958 (XXVII), 12 December 1972.

UN General Assembly Resolution, *Protection of and Assistance to Internally Displaced Persons*, A/RES/62/153, 18 December 2007.

UN General Assembly Resolution, *Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations*, A/RES/46/182, 19 December 1991.

UN General Assembly, *Statute of the Office of the UNHCR*, A/RES/428(V), 14 December 1950.

UN Human Rights Council Resolution, *Mandate of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, A/HRC/RES/6/32, 14 December 2007.

UN Secretary-General, *Analytical Report of the Secretary-General on Internally Displaced Persons*, 1992, E/CN.4/1992/23.

UN, *2005 World Summit Outcome*, UN Doc. A/RES/60/1, October 24, 2005, available online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>.

UNHCR, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, Walter Kälin, 5 January 2010, A/HRC/13/21/Add.3.

UNHCR, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, 5 January 2010, A/HRC/13/21, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-21.pdf>.

B. Legislation

Cabinet of Ministers of Ukraine Resolution No. 1014, *On Amendments to the Procedures for Provision of Monthly Targeted Assistance to Internally Displaced Persons to Cover Housing Costs, Including Utilities*, 9 December 2015, available online at <http://www.kmu.gov.ua/control/ru/cardnpd?docid=248704342>.

Cabinet of Ministers of Ukraine Resolution No. 1393, *Action Plan on Implementation of the National Strategy in the Field of Human Rights Until 2020*, 23 November 2015.

Cabinet of Ministers of Ukraine Resolution No. 509, *On Registration of Internally Displaced Persons*, 1 October 2014.

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

International Committee of the Red Cross, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV)*, 12 August 1949, 75 UNTS 287.

Law of Ukraine № 1706-VII, *On Ensuring of Rights and Freedoms of Internally Displaced Persons*, 20 October 2014, available at <http://zakon3.rada.gov.ua/laws/show/1706-18/print1461440894838797>.

Law of Ukraine No. 640-VIII, *On Amendments to the Law on Humanitarian Aid Regarding Efficiency of Decision Making*, 16 July 2015, available online at: <http://zakon4.rada.gov.ua/laws/show/640-19>.

Law of Ukraine 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, available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54093.

Law of Ukraine No.638-IV, *On the Fight Against Terrorism*, 20 March 2003, available online at <http://zakon5.rada.gov.ua/laws/show/638-15/print1461534016494260>.

Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 U.N.T.S. 3

Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609.

State Security Service Order No. 27 og, *On the Approval of Temporary Procedures for controlling movements of persons, vehicles and goods along the conflict line within Donetsk and Lugansk regions*, 21 January 2015, available online at: http://www.sbu.gov.ua/sbu/control/uk/publish/article?jsessionid=DED87CCD44DEAEC4085EFC041FFAAA4B.app2?art_id=136476&cat_id=135945.

UN Commission on Human Rights, *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.1, 11 February 1998, para. 2 of Introduction, available online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement>.

UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, UNTS, vol. 189, p. 137.

UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, UNTS, vol. 999, p. 171.

UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

UN Sub-Commission on the Promotion and Protection of Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, 28 June 2005, E/CN.4/Sub.2/2005/17, available online at <http://www.unhcr.org/50f94d849.html>.

C. Texts

Catherine Phuong, *The International Protection of Internally Displaced Persons*, (Cambridge University Press, 2004).

Conor Foley and Barbara McCallin, 'The Recovery of Personal Documentation', in Walter Kälin *et al.* (eds.), *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, Studies in Transnational Legal Policy No. 41 (The American Society of International Law, 2008), 337.

David Fisher, 'The Right to Humanitarian Assistance', in Walter Kälin *et al.* (eds.), *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, Studies in Transnational Legal Policy No. 41 (The American Society of International Law, 2008), 47.

Erin D. Mooney, 'Something Old, Something New, Something borrowed ... Something Blue? The Protection Potential of a Marriage of Concepts between R2P and IDPs protection', in Sara E. Davies and Luke Glanville (eds.), *Protecting the Displaced: Deepening the Responsibility to Protect* (Martinus Nijhoff Publishers, 2010), 59.

Erin D. Mooney, 'Towards a Protection Regime for Internally Displaced Persons', in Edward Newman and Joanne van Selm (eds.), *Refugees and Forced Displacement: International Security, Human Vulnerability, and the State*, (United Nations University Press, 2003), 159.

Erin Mooney and Jessica Wyndham, 'The Right to Education in Situations of Internal Displacement', in Walter Kälin *et al.* (eds), *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, Studies in Transnational Legal Policy No. 41 (The American Society of International Law, 2008), 247.

Francis M. Deng, *Protecting the Dispossessed* (Washington DC: Brookings Institution, 1993).

International Committee of the Red Cross, *Strengthening Protection in War: A Search for Professional Standards*, 2001.

James C. Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge, 2014).

Jean-Marie Henckaerts, Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, (ICRC/Cambridge University Press 2005), available online at <https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>.

Joe Oloka-Onyango, 'Movement-Related Rights in the Context of Internal Displacement', in Walter Kälin *et al.* (eds), *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, Studies in Transnational Legal Policy No. 41 (The American Society of International Law, 2008), 9.

Manfred Nowak, *U.N. Covenant on Civil and Political Rights, CCPR Commentary*, 2nd rev. ed. (Kehl am Rhein: Engel, 2005).

Roberta Cohen and Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Brookings Institution Press, 1998).

Thomas G. Weiss and David A. Korn, *Internal Displacement: Conceptualizations and Its Consequences* (Routledge, 2006).

Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection* (Oxford University Press, 2009).

Walter Kälin, *Guiding Principles on Internal Displacement: Annotations* (The American Society of International Law and The Brookings Institution, 2008).

D. Journal Articles

Allehone M. Abebe, Special Rapporteurs as Law Makers: The Developments and Evolution of the Normative Framework for Protecting and Assisting Internally Displaced Persons, 15 *The International Journal of Human Rights* 2 (2011).

Chaloka Beyani, 'The Politics of International Law: Transformation of the Guiding Principles on

Internal Displacement from Soft Law into Hard Law', *Proceedings of the American Society of International Law* 102 (2008).

Emanuela-Chiara Gillard, The Rule of International Humanitarian Law in the Protection of Internally Displaced Persons, 24*Refugee Survey Quarterly* 3 (2005).

Michael M. Cernea, The Question Not Asked: When Does Displacement End?, *Forced Migration Review* 17 (2003).

Michèle Morel, Maria Stavropoulou and Jean -François Durieux, The History and Status of the Right not to Be Displaced, *Forced Migration Review: Preventing Displacement* 41 (2012).

Roberta Cohen, The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting, *Global Governance* 10 (2004).

Roberta Cohen, Lessons Learned from the Development of the Guiding Principles on Internal Displacement, *The Crisis Migration Project, Institute for the Study of International Migration*, 2013.

Roger Zetter, Unlocking the Protracted Displacement of Refugees and Internally Displaced Persons: An Overview, 30*Refugee Survey Quarterly* 4 (2011).

Thomas G. Weiss, Internal Exiles: What Next for Internally Displaced Persons?, 24*Third World Quarterly* 3 (2003).

Walter Kälin, The Future of the Guiding Principles on Internal Displacement, *Forced Migration Review: Special Issue* (2006).

E. Newspaper Articles

Human Rights Europe, *Ukraine and Russia: Court Set for Judgement in Complaint Against Shelling of Donetsk and Lugansk Region Homes*, available online at <http://www.humanrightseurope.org/2016/07/ukraine-and-russia-court-set-for-judgement-in-complaint-against-shelling-of-donetsk-and-lugansk-region-homes/>.

OCHA, Checkpoint Closure Forces People to Make Dangerous Detours, *Ukraine Humanitarian Bulletin* 9 (2016).

OCHA, Draft law on 'Humanitarian Assistance in Crisis Situations' Introduced, *Ukraine Humanitarian Bulletin* 9 (2016).

F. Internet Materials

Alex Mundt and Elizabeth Ferris, *Durable Solutions for IDPs in Protracted Situations: Three Case Studies*, Brookings-Bern Project on Internal Displacement, available online at http://reliefweb.int/sites/reliefweb.int/files/resources/A6BC6AB3389A639C492575130004ACEF-Full_Report.pdf.

Elizabeth Ferris et al., *Off to a Shaky Start: Ukrainian Government Responses to Internally Displaced Persons*, Brookings-LSE Project on Internal Displacement (2015), available online at <http://www.brookings.edu/~media/research/files/reports/2015/05/ukraine-internal-displacement/ukrainian-govt-responses-to-internal-displacement-may-2015.pdf>.

Elizabeth Ferris, *Resolving Internal Displacement: Prospects for Local Integration*, Brookings-LSE Project on Internal Displacement, available online at <http://www.brookings.edu/research/reports/2011/06/01-protracted-displace-local>.

Global Protection Cluster Working Group, *Handbook for the Protection of Internally Displaced Persons*, available online at <http://www.unhcr.org/4c2355229.pdf>.

Global Protection Cluster, *Ukraine Protection Cluster Strategy 2016*, available online at https://www.humanitarianresponse.info/ru/system/files/documents/files/2016_protection_cluster_strategy_0.pdf.

IASC, *Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response*, 24 November 2006, at 2, available online at https://interagencystandingcommittee.org/system/files/legacy_files/Cluster%20implementation%2C%20Guidance%20Note%2C%20WG66%2C%2020061115-.pdf.

ICRC, *ICRC Position on IDPs*, 2006, available online at https://www.icrc.org/eng/assets/files/other/2006_idps_en_icrcexternalposition.pdf.

Internal Displacement Monitoring Centre of the Norwegian Refugee Council, *Global Report on Internal Displacement 2016*, available online at <http://www.internal-displacement.org/globalreport2016/>.

Louise Højen, *Colombia's 'Invisible Crisis': Internally Displaced Persons*, Council of Hemispheric Affairs, 2 February 2015, <http://www.coha.org/colombias-invisible-crisis-internally-displaced-persons/>.

OCHA, *Global Humanitarian Overview 2016*, available online at <https://docs.unocha.org/sites/dms/Documents/GHO-2016.pdf>.

Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *The Rights and Guarantees of Internally Displaced Children in Armed Conflict*, Working Paper No.2, 2010, available online at <https://childrenandarmedconflict.un.org/publications/WorkingPaper-2-Rights-GuaranteesIDP-Children.pdf>.

OHCHR, *CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, UN Doc. E/1992/23, 13 December 1991, paras. 8(a)-(g), available online at <http://www.refworld.org/docid/47a7079a1.html>.

OHCHR, *Report on the Human Rights Situation in Ukraine 15 July 2014*, 15 July 2014, available online at http://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15July2014.pdf.

OHCHR, *Report on the Human Rights Situation in Ukraine 16 February to 15 May 2016*, 15 May 2016, available online at

http://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf.

OHCHR, *Report on the Human Rights Situation in Ukraine 16 November 2015 to 15 February 2016*, 15 February 2016, available online at http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf.

OSCE Thematic Report, *Protection of Civilians and Their Freedom of Movement in the Donetsk and Luhansk Regions*, available online at <http://www.osce.org/ukraine-smm/156791?download=true>.

OSCE, *OSCE SMM to Ukraine: The Facts*, available online at <http://www.osce.org/ukraine-smm/116879?download=true>.

Protection Cluster Ukraine, *Suspension of Social and Pension Payments to IDPs*, March 2016, available online at http://reliefweb.int/sites/reliefweb.int/files/resources/18_march_2016_suspension_of_payments_of_social_benefits_to_idps.pdf.

Protection Cluster Ukraine, *Update on IDP Registration*, August 2015, available online at https://www.humanitarianresponse.info/ru/system/files/documents/files/ukraine_pc_registration_update_august_en_0.pdf.

Right to Protection in Partnership with HIAS, *Monitoring Report as of the Suspension of IDP Certificates, Social Payments and Pension Payments for IDPs in Kharkiv, Donetsk, Luhansk, Zaporizhzhia and Dnipropetrovsk regions*, available online at http://r2p.org.ua/wp-content/uploads/2016/06/Monitoring_suspension_of_IDP_certificates1.pdf.

Sean Zheng, 'Migration, Displaced Persons and Refugees', in UN Gender Statistics Manual: Integrating a Gender Perspective into Statistics (2010), available online at <http://unstats.un.org/unsd/genderstatmanual/Refugees-and-internally-displaced-persons.ashx>.

Statement by IASC Principals, *Centrality of Protection in Humanitarian Action*, 17 December 2013, available online at https://interagencystandingcommittee.org/sites/default/files/centrality_of_protection_in_humanitarian_action_statement_by_iasc_princi.pdf.

The 2016 Humanitarian Response Plan, available online at

[http://www.un.org.ua/images/documents/3690/2016_hrp_ukraine_english\(1\).pdf](http://www.un.org.ua/images/documents/3690/2016_hrp_ukraine_english(1).pdf).

The Brookings Institution – London School of Economics Project on Internal Displacement and The International Rescue Committee, *Improving Prospects for Durable Solutions for Iraqi Internally Displaced Persons and Refugees*, 24 February 2012, available online at

<http://www.brookings.edu/~media/events/2012/2/24-iraq-displacement/event-report.pdf>.

The Brookings Institution – University of Bern Project on Internal Displacement, *When Displacement Ends: A Framework for Durable Solutions*, 2007, available online at http://www.brookings.edu/~media/research/files/reports/2007/9/displacementends/2007_durable_solutions.pdf.

The Brookings Institution-University of Bern Project on Internal Displacement, *Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons*, April 2010, available online at <http://www.unhcr.org/50f94cd49.pdf>.

The Refugee Studies Centre, *Unlocking Protracted Displacement: Iraqi Case Study*, Working Paper Series No.78, 2011, available online at <http://www.internal-displacement.org/assets/publications/2011/201108-Unlocking-protracted-displacement-Iraqi-case-study-thematic-en.pdf>.

Ukraine Humanitarian Country Team, *Humanitarian Needs Overview 2016*, available at https://www.humanitarianresponse.info/en/system/files/documents/files/2016_hno_ukraine_english_13022016.pdf.

Ukraine Humanitarian Country Team, *The 2015 Humanitarian Response Plan*, available online at http://www.un.org.ua/images/UKRAINE_HRP_2015_FINAL_1.compressed.pdf.

Ukrainian Helsinki Human Rights Union, *Report on Access to Humanitarian Aid under Conditions of Armed Conflict in the East of Ukraine*, available online at http://helsinki.org.ua/wp-content/uploads/2016/06/Pravo-na-humdopomohu_Engl.pdf.

UN Human Rights Committee, *ICCPR General Comment No. 16: Article 17 (The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation)*, UN Doc. HRI/GEN/1/Rev.9 (Vol.1), 8 April 1988, available online at ccprcentre.org/page/view/general_comments/27798.

UNHCR Executive Committee, *General Conclusion on International Protection*, Conclusion No. 102(LVI), 7 October 2005, available online at <http://www.unhcr.org/en-us/excom/exconc/43575ce3e/general-conclusion-international-protection.html>.

UNHCR Informal Consultative Meeting, *The Protection of Internally Displaced Persons and the Role of UNHCR*, 27 February 2007, available online at <http://www.unhcr.org/uk/protection/idps/50f951df9/protection-internally-displaced-persons-role-unhcr-excom-informal-consultative.html>.

UNHCR Ukraine, *Asylum Statistics in Ukraine*, available online at <http://unhcr.org.ua/en/resources/statistics>.

UNHCR Ukraine, *Key Messages on Internal Displacement*, February 2016, available online at http://unhcr.org.ua/attachments/article/1231/2016_02_UNHCR%20KEY%20MESSAGES%20N%20INTERNAL%20DISPLACEMENT%20IN%20UKRAINE.pdf.

UNHCR Ukraine, *Key Protection Concerns and UNHCR Recommendations*, available online at http://unhcr.org.ua/attachments/article/1231/2016_02_Key%20Protection%20Concerns%20and%20UNHCR%20Recommendation%20-%20UKRAINE.pdf.

UNHCR Ukraine, *Ukraine Fact Sheet April 2016*, available online at <http://unhcr.org.ua/attachments/article/317/UKRAINE%20FACTSHEET%20%20APR16%20FINAL.pdf>.

UNHCR Ukraine, *UNHCR Operational Update 11 June – 15 July 2016*, available online at <http://reporting.unhcr.org/sites/default/files/regionalupdates/UNHCR%20Operational%20Update%20on%20the%20Ukraine%20Situation%20-%2011JUN-15JUL16.pdf>.

UNHCR, *A Community-Based Approach in UNHCR Operations*, 2008, available online at <http://www.unhcr.org/47f0a0232.pdf>.

UNHCR, *Global Forced Displacement Hits Record High*, available online at <http://www.unhcr.org/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html>.

UNHCR, *UNHCR Age, Gender and Diversity: Accountability Report 2015*, available online at <http://www.unhcr.org/en-us/protection/women/5769092c7/unhcr-age-gender-diversity-accountability-report-2015.html>.

UNHCR, *UNHCR Global Trends: Forced Displacement in 2015*, available online at <http://www.unhcr.org/576408cd7>.

UNHCR, *UNHCR Resettlement Handbook*, 2011, available online at <http://www.unhcr.org/46f7c0ee2.pdf>.

UNICEF, *A Rapid Wash and Infrastructure Assessment in Non-Government Controlled Areas of Eastern Ukraine*, January 2016, available online at [http://www.unicef.org/ukraine/REACH_report_blue_\(003\).pdf](http://www.unicef.org/ukraine/REACH_report_blue_(003).pdf).

UN in Ukraine, *Humanitarian Response in Ukraine*, available online at <http://www.un.org.ua/ua/27-page/3481-humanitarian-response>

G. Other materials analysed

Brookings Institution – University of Bern, Project on Internal Displacement, *Addressing Internal Displacement: Framework for National Responsibility*, 2005.

Brookings Institution-University of Bern: Project on Internal Displacement, *Protecting Internally Displaced Persons: A Manual for Law and Policy Makers*, 2008.

OCHA, Inter-Agency Standing Committee, *Protection of Internally Displaced Persons*, Policy Paper Series, No. 2, 2000.

8. Abstract

In recent years, internal displacement has emerged as one of the most pressing humanitarian, human rights and political issues facing the international community. In this connection, the question of finding adequate response to populations of concern and protecting their rights receives increasing attention. IDPs remain entitled to the same rights that all other persons in their country enjoy. Forced from their homes, however, IDPs have special protection risks, in particular those related to security concerns and destruction or loss of their homes.

The protection of IDPs within their own country is the responsibility of national authorities. UN and other international actors also rally to a crisis of internal displacement applying the 'cluster approach'. However, their role is complementary to sovereign responsibilities. Respect to the main bases of human rights protection binds the activities of the local governments and international community involved in handling situations of internal displacement.

The thesis explains how the subject of internal displacement relates to the principle of sovereignty; shows what legal rights IDPs are entitled to under the Guiding Principles; and describes the role of cluster approach in providing protection and assistance to IDPs. Essentially, this thesis studies legal framework and policies on internal displacement on both local and international level. For this, domestic legislation on internal displacement in Ukraine that has been developed so far to address this problem is used to assess the seriousness of the Ukrainian's government commitments to its international obligations on human rights.

The findings are that the Ukrainian government's approach to internal displacement still falls short of international protection standards and benchmarks of the National Framework on Internal Displacement. Displaced population has experienced discrimination in social and economic rights. The national authorities fail to react adequately to the accommodation challenges. All these create poor preconditions for finding durable solutions to internal displacement in Ukraine. This thesis, thus, demonstrates the importance of upholding human rights obligations of states in fragile contexts.

8. Auszug

In den letzten Jahren ist die Migration innerhalb des Landes zu einem ernsthaften humanitären und politischen Problem sowie einem dringenden Problem im Bereich der Menschenrechte, das vor der Weltgemeinschaft steht, geworden. Im Zusammenhang damit beunruhigt die Frage der adäquaten Reagierung auf Besorgnis der Bevölkerung und des Rechtsschutzes der Bevölkerung. Intern Vertriebenen genießen innerhalb ihres Landes alle Rechte, genauso wie die anderen Bürger dieses Landes. Intern Vertriebenen, die gezwungen waren, ihre Häuser zu verlassen, tragen besondere Risiken, insbesondere im Zusammenhang mit Problemen der Sicherheit, mit der Vernichtung oder dem Verlust ihrer Wohnungen.

Die Verantwortung für die Sicherung des Schutzes und der Hilfe für intern Vertriebenen im ihren Land tragen nationale Behörden. Die UNO und andere internationalen Organisationen vereinigten sich zur Lösung dieses Problems und zur Beseitigung der Krise im Zusammenhang mit interner Vertreibung, wobei die „Clustermethode“ genutzt wird. Diese Organe aber spielen eine zusätzliche Rolle in Bezug auf die Verantwortung, die der Staat trägt. An der Suche nach der Lösung der Probleme betreffs der Menschenrechte müssen die lokalen Behörden und internationale Gemeinschaft, die sich mit der Lösung der Fragen im Zusammenhang mit interner Vertreibung beschäftigen, aktiv teilnehmen.

Die These erklärt, welche Beziehung die intern Vertriebenen auf den Grundsatz der Souveränität haben; zeigt, welche juristischen Rechte die intern Vertriebenen gemäß den Leitgrundsätzen haben; und beschreibt die Rolle der „Clustermethode“ in der Sicherung des Schutzes und der Hilfe für intern Vertriebenen. Im Grunde genommen, untersucht diese These die Rechtsgrundlagen und die Politik betreffs der internen Vertreibung auf dem örtlichen und internationalen Niveau. Zu diesen Zwecken wird das nationale Gesetz betreffs der internen Vertreibung in der Ukraine, das zur Lösung dieses Problems erarbeitet wurde, zur Bewertung der Ernsthaftigkeit von Verpflichtungen der ukrainischen Regierung in Bezug auf internationale Verpflichtungen im Bereich Menschenrechte genutzt.

Die Ergebnisse zeigen, dass der Ansatz der ukrainischen Regierung zur internen Vertreibung immer noch im Vergleich zu internationalen Standards im Bereich des Schutzes der Menschenrechte und Ausgangskennwerten des Nationalen Programms für intern Vertriebenen zurückbleibt. Die vertriebene Bevölkerung erlebt Diskriminierung in sozialen und wirtschaftlichen Rechten. Nationale Behörden sind nicht imstande, auf die Probleme der Unterbringung adäquat zu reagieren. Das alles bildet die aussichtslosen Voraussetzungen für die Suche nach langfristigen Lösungen, die mit innerer Vertreibung in der Ukraine verbunden sind. Also, diese These zeigt die Wichtigkeit der Einhaltung von Verpflichtungen im Bereich Menschenrechte in den Staaten die in einer instabilen Lage sind.