



# Toward a Legislative Framework for Protecting Persons Affected by Conflict



## Parliament's Role in Protecting the Civilian Population

Since 2014, the Verkhovna Rada has adapted the country's legal framework to respond to consequences of the conflict. This complex task remains unfinished.

It is possible to make progress quickly. Important preparatory work has been done: civil society and government actors have developed draft legislation to help Ukraine to fulfill its obligations toward all persons affected by the conflict. Following a review and any necessary revisions or updates by the new parliament, these draft laws can form the building-blocks of a policy that would extend protection to persons affected by the conflict, fulfill Ukraine's international human rights obligations, and promote social cohesion.



## Why This is a Priority

This legislation would have a profound impact on the lives of civilians affected by the conflict. If it were adopted, Ukraine would protect their rights to citizenship, property and documentation. All persons affected by the conflict would access their pensions and social benefits; they would be able to enroll easily in Ukrainian educational institutions. Newborn babies would obtain Ukrainian birth registration. Humanitarian assistance would reach people more easily. More IDPs would obtain access to social and affordable housing.

The main reason for prioritizing this legislation is a simple one: people cannot wait. The conflict continues to exact a high toll on civilians. They have lost loved ones, homes, jobs and communities. Some live in areas of extreme danger and tension. Their suffering demands a response by all who bear a duty to the citizens of Ukraine. This clearly includes the Verkhovna Rada.

This legislation would build trust between the state and persons affected by the conflict. It would promote social cohesion among all communities, which contributes to the territorial integrity of Ukraine. It would contribute to economic recovery in areas affected by the conflict.

By adopting these pieces of legislation as a package, perhaps as a part of a strategic roadmap, Ukraine can attract greater external support for implementing those measures that involve a financial impact.



## Who Will Benefit

This legislation will benefit different groups of civilians who are affected by the conflict differently depending on their location:

- Persons living along the contact line (conflict-affected persons) face risks to their physical safety. They face death or injury as a result of shells, small arms fire and mines/unexploded ordnance. Their homes are damaged. Along the contact line, jobs have disappeared, and the authorities struggle to provide services. Some communities do not have water, electricity and gas; others lack medical services, public transportation and shops for buying food.
- Persons living in the non-government controlled areas (NGCA) must travel long distances at considerable expense and through dangerous territory to government-controlled areas (GCA) in order to maintain family ties and access administrative and social services (e.g., birth/death registration, issuance and renewal of passports/IDs, banking, pensions, access to justice, etc.).
- Internally displaced persons (IDPs) from both eastern Ukraine and the Autonomous Republic Crimea live throughout Ukraine. They face difficulties in finding affordable housing and decent livelihoods; many wish to integrate in their new communities but face legal and administrative obstacles.

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\* The Humanitarian Coordinator in Ukraine leads the efforts of the international community through the Humanitarian Country Team, comprising of UN, national and international non-Governmental organizations, as well as international organizations, to ensure timely and effective response to the humanitarian crisis in eastern Ukraine.



## Vision for a Legislative Framework

A legislative framework for protecting persons affected by the conflict would cover six areas. This is the vision:

1. **Protection of civilians and civilian infrastructure from the effects of armed conflict.** Civilians and their property would enjoy greater protection during the armed conflict. Civilian victims of the conflict would receive assistance and compensation to repair, as much as possible, the harm they have suffered. People would receive restitution or compensation for their damaged homes, which would enable them to rebuild their lives.
2. **Freedom of movement.** A new Cabinet of Ministers regulation would simplify the crossing of the entry-exit crossing-points (EECPs) and improve their conditions. People would not be obliged to obtain a separate electronic permit to pass through the EECPs; they would be able to carry personal goods, with narrow exceptions for items prohibited on security grounds. The EECPs' conditions would provide safety and dignity; services and information would be easily available.
3. **Humanitarian Mine Action.** All victims of mine incidents would receive assistance and compensation to repair, as much as possible, the harm they have suffered. The new regulatory framework for mine action will ensure safe, efficient and high-quality clearance of mine contamination. The region will be safer for civilians and for economic development.
4. **IDP inclusion and durable solutions.** With a right to vote in local elections and for majoritarian seats in parliamentary elections, IDPs will integrate more fully in their new communities. More IDPs will find durable housing solutions. IDPs from Crimea will receive equal treatment in access to social and economic rights.
5. **Access to pensions and social benefits.** All citizens of Ukraine will receive their pensions on an equal basis and in dignity, regardless of their place of residence or their registration as an IDP. Pensioners, who are among the most vulnerable people affected by the conflict, will be able to meet their basic needs without undue hardship.
6. **Birth and death registration.** An increasing proportion of children born in NGCA will hold Ukrainian birth certificates. They will be able to access health services, enter Ukrainian schools and obtain Ukrainian passports.

For each policy area, a one-page document summarizes the background information and suggestions on the way forward.



## The Package is in Line with International Law and the Recommendations of International Bodies

International human rights law and international humanitarian law govern the treatment of the civilian population living along the contact line.

International law recognizes that if a state has diminished control over the territory, its ability to fulfil its human rights obligations may be impacted and reduced. Nevertheless, a state retains positive obligations towards persons who reside in this territory. A state complies with international law and fulfills its positive obligations towards citizens if it undertakes all possible diplomatic, economic, judicial and other measures necessary to meet its human rights obligations.

International standards for the protection of internally displaced persons are contained in the Guiding Principles on Internal Displacement, thirty standards that outline the protections available to IDPs. They detail the rights and guarantees relevant to the protection of IDPs from forced displacement to their protection and assistance during displacement up to the achievement of durable solutions. The Guiding Principles are consistent with and reflect international human rights and humanitarian law, as well as refugee law by analogy. The principles interpret and apply these existing norms to the situation of displaced persons.



## Next Steps

As the parliament considers its priorities for the upcoming session, organizations in the Humanitarian Country Team, which includes United Nations agencies, international non-governmental organizations and Ukrainian civil society organizations, offer support parliament and government actors with the strengthening of the legal framework on protection of persons affected by the conflict. This support will draw on our practical experience of delivering humanitarian assistance in Ukraine for the past five years, as well as our collective expertise in international law and best practices.

To request further information or support, please contact: [protectionclusterukraine@gmail.com](mailto:protectionclusterukraine@gmail.com)

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# 1. Protection of Civilians and Civilian Infrastructure from the Effects of Armed Conflict

## 1.1. Protection of Civilians from the Effects of Armed Conflict

Armed conflict in eastern Ukraine took a heavy death toll on civilians. Since mid-April 2014, at least 3,349 civilians have been killed and over 7,000 have been injured. Though in 2019 conflict-related civilian casualties – 27 killed and 140 injured, including eight killed and 95 injured by shelling and small arms and light weapons fire – were the lowest for the entire conflict period, civilian residents of the conflict zone continue to face high risks of being killed or injured because of active hostilities.

### Positive Developments:

Ukraine's National Strategy for the Protection of Civilians in Armed Conflict for the period until 2030 has been developed by the Ministry of Defence and, as of January 2020, was at the final stage of being agreed upon. The Strategy is expected to be adopted by President's Edict in early 2020 and to be instrumentalised through the relevant Action Plan. On 27 December 2019, a draft law regarding the implementation of International Humanitarian Law (IHL) was submitted to the Ukrainian Parliament for its consideration.

### Gaps and Benefits of Improving the Legislative Framework:

Ukraine's armed forces do not have a clear policy framework for operationalizing obligations to protect civilians under international humanitarian law.

#### Addressing the above would lead to:

- Decrease in civilian casualties and better protection of civilians from the impact of armed hostilities.

### Existing International Law/Policy Framework:

- UN Security Council's resolutions (1265 (1999), 1296 (2000), 1674 (2006), 1738 (2006), 1894 (2009), 2175 (2014), 2222 (2015), 2286 (2016) and 2417 (2018));
- Thirteen Security Council's presidential statements and SG reports on protection of civilians in armed conflict (the latest one dated 7 May 2019, S/2019/373), which call on Member States develop a national policy framework that establishes clear institutional authorities and responsibilities for the protection of civilians and civilian objects in the conduct of hostilities.

### Existing National Law/Policy Framework:

- Ukraine is party to the Geneva conventions of 1949;
- Order of the Minister of Defence of 23 March 2017 "On the approval of the Instruction on the implementation of the norms of international humanitarian law in the Armed Forces of Ukraine";
- National Human Rights Strategy.

### Next Steps:

- Adoption of the Strategy for Protection of Civilians in Armed Conflict (up to 2030);
- Preparation of an Action Plan for implementation of the Strategy;
- Draft any necessary legislative amendments and/or bylaws and operational guidelines for the implementation of the Strategy.

## 1.2. Remedy and Reparation to Civilian Victims of the Conflict

While as of 31 December 2019, at least 3,349 civilians were killed and over 7,000 were injured on both sides of the contact line as a result of hostilities in eastern Ukraine, a comprehensive state policy of remedy and reparation to civilian victims of the conflict is still lacking, especially as regards to those injured, including persons with disabilities, and families of those killed.

### Positive Developments:

At least five positive court decisions were taken by courts of first instances on compensation to families of civilians killed in hostilities, awarding approximately 500,000 UAH (21,000 USD) each on average.



In August 2019, a draft law No 1115 “On status and social protection of civilians who suffered as a result of hostilities or armed conflicts” was registered in the Parliament. The draft is co-sponsored by the parliamentary committees (on human rights and on social policy), and a working group comprising representatives of state bodies, local authorities, NGOs and international organizations was created to contribute to the draft.

### **Gaps and Benefits of Improving the Legislative Framework:**

Civilian victims of the conflict do not have access to remedy and reparation for the harm they have suffered.

**Addressing the above would lead to:**

- Increased enjoyment by civilian victims of hostilities of their right to remedy and reparation.

### **Existing International Law/Policy Framework:**

UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law stipulate restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition for the harm suffered by victims.

### **Existing National Law/Policy Framework:**

- Amendments to the Law of Ukraine ‘On the status of war veterans and their social protection guarantees’ enhanced the social protection of participants of the anti-terrorist operation, of the Revolution of Dignity and their family members No 2203-VIII of 14 November 2017.
- Resolution of the Cabinet of Ministers No 306 of 25 April 2018 determining the procedure for linking disability with conflict-related injuries. The order enables the implementation of amendments to Law on War Veterans which allowed certain categories of civilians whose disability resulted from armed hostilities, to enjoy benefits of war veterans.
- Resolution of the Cabinet of Ministers No 268 of 5 April 2017 “On the Order of Determining the Status of a Child – a Victim of Armed Actions and Conflicts” (as amended in April 2018).
- Cabinet of Ministers’ resolution No 623 of 10 July 2019 which amended resolution No 947 of 18 December 2013 “On the approval of the order of provision and determining the amount of monetary assistance or compensation to victims of emergency situations who remained at their place of residence”.
- The Law on the Legal Status of Missing Persons provides for financial assistance to families of the missing, but does not cover other needs, such as legal, administrative and psycho-social needs.
- The national legal framework does not adequately address the needs of persons formerly detained in relation to the conflict, or the families of those currently detained.

### **Next Steps:**

- Adopt a comprehensive state policy and mechanism on remedy and reparation for civilian victims of the conflict – draft law 1115 “On status and social protection of civilians who suffered as a result of hostilities or armed conflicts”. The text of draft law 1115 could serve as a basic ground for the elaboration of the framework legislation in this area. The working group contributing to its review could be enhanced through participation of the UN experts;
- Amend legislation and by-laws to ensure that families of the missing and detained, as well as persons formerly detained in connection with the conflict, receive an adequate remedy and reparation.

## **1.3. Compensation for Lost or Damaged Property**

Due to hostilities in eastern Ukraine, over 50 000 residential buildings were damaged or destroyed at the government-controlled part of the territory since 2014, with estimated half of them having been repaired. Still, individuals whose property has been damaged or destroyed do not have access to an effective remedy mechanism to claim restoration of their Housing, Land and Property (HLP) rights, to receive restitution or compensation for damaged or destroyed property. The judicial procedure is the main avenue used in Ukraine for enforcement of HLP rights, compensation for damaged or destroyed property. No compensation has been received based on a court decision so far.

### **Positive Developments:**

- The Cabinet of Ministers adopted Resolution No. 947, which determines the procedures for compensation for damaged or destroyed housing during the hostilities and some 40 million UAH



have already been allocated for the compensation within the Budget 2020 although the elaboration of additional draft-laws is still pending. The Working Group on compensation for damaged/destroyed housing has been recently established under the Parliamentary Committee on Human Rights, Deoccupation and Reintegration of Temporarily Occupied Territories in Donetsk, Luhansk Regions and Autonomous Republic of Crimea, National Minorities and Interethnic Relations. The WG will develop a specific law on compensation for housing damaged/destroyed as a result of hostilities in eastern Ukraine.

### Gaps and Benefits of Improving the Legislative Framework:

- The suggested compensatory mechanism when fully equipped will be available to a limited number of individuals who remained residing at the same locations where their lost or damaged housing is situated. No adequate funding would be available to cover the losses. Still, a framework legislation is needed to ensure that all individuals whose property has been damaged or destroyed have access to effective remedies;
- Military use of civilian property without a provision of compensation (for utility bills, damages and harm committed) and adequate housing is a matter of another concern;
- Additionally, looting of civilian property is not investigated objectively and effectively.

#### Addressing the above would lead to:

- All conflict-affected individuals will have access to compensatory mechanisms for their lost or damaged property. The suggested mechanisms are administrative. Compensation mechanisms will support IDPs in finding sustainable housing solutions, which will reduce expenditures for targeted assistance.

### Existing International Law/Policy Framework:

- Article 1 of Protocol I of the European Convention on Human Rights. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
- European Convention on Human Rights. Article 13. Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.
- PACE Resolution 1708 (2010) Solving property issues of refugees and internally displaced persons:
  - Recommendation 10.1 Guarantee timely and effective redress for the loss of access and rights to housing, land and property abandoned by refugees and IDPs without regard to pending negotiations concerning the resolution of armed conflicts or the status of a particular territory;
  - Recommendation 10.2 ensure that such redress takes the form of restitution in the form of confirmation of the legal rights of refugees and displaced persons to their property and restoration of their safe physical access to, and possession of, such property. Where restitution is not possible, adequate compensation must be provided, through the confirmation of prior legal rights to property and the provision of money or goods having a reasonable relationship to their market value, or other forms of just reparation.
- Pinheiro Principles (United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons):
  - Principle 2. The right to housing and property restitution, provides for compensation in case restoration of rights is impossible (2.1) and states that Restitution is preferred to any other type of redress (2.2).
  - Principle 21. Compensation. Compensation shall be effective and may be monetary or in kind. (21.1).

### Existing National Law/Policy Framework:

- Action Plan on Implementation of the National Strategy in the Area of Human Rights for the Period until 2020:
  - To establish a working group for development of the procedure for compensation for the property damaged as a result of the ATO;
  - To analyse international experience and best practices in provision of compensation for property



damaged as a result of the armed conflict;

- Based on the analysis conducted the working group shall develop a draft regulatory act on the procedure for compensation for the cost of the damaged property which must establish:
  - Procedure for calculation of compensation;
  - Financial sources of compensation payments;
  - mechanisms for engagement of donors and investors.
- Code of Civil Protection (Chapter 17 (Articles 84-89).
- Law on Military-Civil Administrations (Article 4, point 13). Military-Civilian Administration has an authority to provide civilians in need of housing assistance with building housing; provision of assistance to owners of apartments (homes) on its recovery in case of destruction due to terroristic acts, sabotage; facilitating building, reconstruction and repair of the housing objects within the municipality property, residential homes.
- Cabinet of Ministers Resolution #947 (18 December 2013) on financial assistance and compensation for property.

### Next Steps:

- Adopt a special law on compensation establishing the right for all conflict-affected individuals to exercise their right to compensation for damaged or destroyed property. As a first step, a draft law on compensation for damaged and destroyed property no. 2286 has been submitted to the Parliament and registered on 18 October 2019. The Parliament to revise the draft in the line with the international standards ensuring affected population with an equal access to compensation.
- The Parliament to revise the State Budget in order to include additional budgeting for the implementation of the provisions on compensation.
- MTOT to amend the Resolution no. 947 on financial assistance and compensation in accordance with the recommendations of the international organizations and civil society.
- MTOT to adopt required instruments to ensure implementation of Cabinet of Ministers Resolution no. 947.
- Cabinet of Ministers (especially Ministry of Finance) shall ensure sustainable financing of the expenses related to the implementation of the compensation related provisions.



## 2. Freedom of Movement

Since March 2019, an increase in the number of crossings of the line of contact in the eastern Ukraine through entry-exit check points (EECPs) became steady resulting in the average 1.1 million crossings per month. Operating hours of all EECPs had to be extended on several occasions in 2019 to facilitate the increased demand for crossing. Safety and security around the checkpoints remain a concern, this often means that the checkpoints must cease operations security reasons, further inhibiting people's freedom of movement. At the administrative border line (ABL) with the Autonomous Republic of Crimea, where the average monthly crossings reached 223 thousand, public services need to be made available closer to the crossing points in order to facilitated access for residents of Crimea.

### Positive Developments:

- The Government of Ukraine made efforts to ease the situation with crossing of the 'conflict line' for the civilian population, including efforts on restoration of a destroyed bridge, as well as the proper arrangements of the Stanytsia Luhanska entry and exit checkpoints, as well as adoption of resolutions. Resolution No. 815 approves the procedure for movement of persons and goods to/from NGCAs with some amendment elaborated by the Civil Society Organisations and UN agencies. In addition, a list of items prohibited for transfer across the "contact line" from GCA to NGCA has been adopted by the order of the Ministry of Veterans Affairs, Temporarily Occupied Territories and IDPs (MVTOT).

### Gaps and Benefits of Improving the Legislative Framework:

- Current rules on crossing the 'contact line' require individuals to obtain an electronic permit; conditions at the checkpoints have improved, but still require additional measures.
- Another specific problem exists for residents of Luhansk NGCA who arrive to the controlled territory through the territory of the Russian Federation. They are fined as per Art.204-2 of the Code of Administrative Offences. The fines reach up to 3500 UAH. People tend to use routes through the Russian Federation since Luhansk oblast has only one EECP which is a pedestrian checkpoint. There is a need to open additional checkpoints in Luhansk oblast.
- At the administrative border with Crimea which are located remotely from different settlements, public transportation needs to be made available.

### Addressing the above would lead to:

- More individuals able to cross the 'contact line' and access services in government-controlled areas;
- Faster crossing;
- Less suffering at the EECPs;
- Strengthen social cohesion among communities;
- Improve food security and livelihood opportunities through trade in local agricultural goods;
- Diversify safe routes of travel between GCA and NGCA through the territory of the Russian Federation;
- Ensure better access to public services for residents of Crimea and thus preserving links with those territories.

### Existing International Law/Policy Framework:

- International Covenant on Civil and Political Rights, Article 12 read in conjunction with Article 2(1) and (3);
- Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol 11, Article 2;
- "Support measures that ease movement across and along the line of contact";
- PACE (Resolution 2198): open checkpoint at Zolote (9.6);
- PACE (Resolution 2209): improvement of material conditions at checkpoints (18.1.2).



### Existing National Law/Policy Framework:

- Law of Ukraine #1382-15 “On freedom of movement and free choice of place of residence in Ukraine”;
- Government Resolution #815 “On Approval of the Procedure for Entry and Exit of the Temporarily Occupied Territory of Ukraine”;
- Law of Ukraine #2268 “On the peculiarities of the state policy on restoring the state sovereignty of Ukraine at temporarily occupied territories in Donetsk in Luhansk oblast”;
- Article 12 of Law on IDPs;
- Cabinet of Ministers Resolution establishing Regulations of the movements of individuals across the contact line;
- Ministry of veterans, TOT and IDPs Order no. 92 establishing the List of items prohibited for transferring across the contact line and from/to humanitarian-logistic centres and personal items;
- Article 204-2 Code of Administrative Offences regarding violation of rules of procedure on entering and exiting the temporarily occupied territories (including NGCA).

### Next Steps:

- MToT to amend the regulation on goods prohibited from being transported across the ‘contact line’, removing the reference to personal items;
- Prepare a draft law amending Art. 204-2 of the Code of Administrative Offences to ensure that freedom of movement for NGCA residents is not impeded;
- Ensure that public services are available at the EECs at the administrative border with Crimea.





## 3. Humanitarian Mine Action

A lack of a comprehensive Mine Action law from 2014 through 2018 led to difficulties in mine action coordination. Following its adoption in December 2018 and presidential signature entry into force in January 2019, the next steps necessary on the part of the Government of Ukraine include the adoption of national Mine Action Standards (based on International Mine Action Standards), the establishment of a National Mine Action Authority and Mine Action Centre via associated legislation, the clarification of funding mechanisms for mine action operators, a scale-up in clearance, and, ideally, focus on other Mine Action pillars, especially Mine Victim Assistance, and information systems for victim data. The transition to the new system of coordination and operating standards is likely to require a period of adjustment and integration to conform to the new requirements.

### Positive Developments:

As per requests of some national partners, there has been established Mine Action Law Working Group within MA Sub-Cluster to address key issues related to the law implementation. Having considered its results, Verkhovna Rada Committee on National Security and Defense Working group introduced two amendments to the existing law and registered them on 18 and 28 December 2019. Their adoption may facilitate the implementation of mine action policy and ensure the protection of civilians in contaminated areas.

### Gaps and Benefits of Improving the Legislative Framework:

Ukraine adopted a law on mine action, but there are important gaps: not all mine victims are eligible for compensation and assistance; and the institutional and regulatory framework needs improvement to ensure accountability for safe and complete clearance.

#### Addressing the above would lead to:

- Increased scope and efficiency of mine action activities;
- Enhanced safety of the mine action operators;
- Improved coordination between demining actors;
- Increased protection of the civilian population.

### Existing International Law/Policy Framework:

- Anti-Personnel Mines Ban Convention;
- Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (amended) to the Conventional Weapons Convention;
- Articles 3, 5, 9 of Convention on Certain Conventional Weapons (CCW), Protocol V on Explosive Remnants of War:
- Article 3: Each High Contracting Party and party to an armed conflict shall bear the responsibilities with respect to all explosive remnants of war in territory under its control;
  - as soon as feasible, each High Contracting Party and party to an armed conflict shall mark and clear, remove or destroy explosive remnants of war in affected territories under its control. Areas affected by explosive remnants of war ... shall be accorded priority status for clearance, removal or destruction.
- International Mine Action Standards (IMAS) as a set of recommendations (not a binding regulation).
- PACE Resolution No. 2214 (2018) encourages Ukraine to 'support and assist demining operations' but includes no recommendations on development of mine-action related framework.
- Ukraine is not a State Party to the Cluster Munitions Convention.

### Existing National Law/Policy Framework:

- Law of Ukraine "On demining activity" (#2642-VIII).



### Next Steps:

- Adopt amendments to law #2642-VIII following consultations on a draft text among parliament, government actors and humanitarian mine actors;
- Adopt by-laws related to transport, storage, handling and use of explosive items;
- Cabinet of Ministers to ensure demining law in use and functioning;
- Cabinet of Ministers to adopt the following:
  - By-laws to establish National Mine Action Authority and Mine Action Centre, define composition of the NMAA and allocate funds in the State Budget 2020;
  - Adopt National MA Strategy and National MA Programme and allocate funds in 2020 budget for their implementation;
  - Allocate funds for conducting mine action activities, including mine risk education, mine victim's assistance;
  - Procedure for the State's cooperation with the directly donor funded operators;
  - Procedure for applying for the one-time permit on import and use of specified dual use equipment and items for the purposes of the mine action;
  - Procedure on tax exemption for demining equipment and tools;
  - Procedure for the accreditation of the mine action operators.



## 4. IDP inclusion and durable solutions

### 4.1. Housing for IDPs

According to the Ministry of Social Policy, there are 1,428,000 registered IDPs (as of 10 December 2019) in Ukraine. After 5 years of conflict, the number of IDPs who intend to stay in areas of displacement is rising and in 2019 it exceeds the number of IDPs who intend to return to their areas of origin: only one per cent expressed an intention to return home in the near future, 22 per cent would return after the end of the conflict, and 36 per cent stated that they did not plan to return home, even after the end of the conflict (IOM, National Monitoring System, June 2019). Current policies link various rights and benefits to IDP registration. IDPs do not have permanent residence registration in their host communities. Thus, they cannot vote in local elections and are not formally included in these communities.

#### Positive Developments:

- In 2019, the Cabinet of Ministers issued several resolutions and introduced various state programmes aimed to enhance access of IDPs to housing. Thus, IDPs are now can purchase a permanent housing with the support of state funds, enjoy the right to preferential long-term mortgage loans, as well as receive support in terms of temporary housing.

#### Gaps and Benefits of Improving the Legislative Framework:

IDPs say that finding long-term housing is a high priority. This need could be satisfied in different ways, e.g., through temporary, social and affordable housing.

#### Addressing the above would lead to:

- improving of IDPs' living conditions, facilitation of IDPs' integration and protection of IDPs from marginalization.

#### Existing International Law/Policy Framework:

- International Covenant on Economic, Social and Cultural Rights. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. (Article 11.1);
- Guiding Principles on Internal Displacement. At the minimum, regardless of the circumstances and without discrimination, competent authorities shall provide IDPs with and ensure safe access to ...(b) basic shelter and housing; (Principle 18(b));
- PACE Resolution 2198, Recommendation. Ensure the right to adequate housing and resolve housing matters as an integral part of sustainable solutions for IDPs, including the adoption of a legal framework for the introduction and implementation of different types of housing programmes. 11.13.).

#### Existing National Law/Policy Framework:

- Strategy of Integration of Internally Displaced Persons and Implementation of Long-Term Solutions to Internal Displacement until 2020 (Cabinet of Ministers Resolution 909-r of November 2017) states that:
  - "finding an effective mechanism for providing housing for internally displaced persons will enable as many IDPs as possible to exercise their right to housing" to be its strategic goal. It contains two priority tasks (changes to national legislation to prioritize IDPs in accessing temporary housing; use of credit and financial mechanisms to ensure access to affordable housing), which shall be further elaboration in the Action Plan to the Strategy.
  - The Cabinet of Ministers included IDPs in the state program for subsidized housing (50/50 program) administered by the State Youth Housing Fund; however the budgeting is not sufficient to cover the existing housing needs.
  - The state budget for 2019 included an allocation of 10 million UAH for MToT to subsidize local authorities in developing temporary and social housing programs for IDPs.
- Law of Ukraine "On ensuring of rights and freedoms of internally displaced persons":
  - Other rights and duties of internally displaced person – "An internally displaced person has the right to...proper conditions of person's permanent or temporary accommodation (Article 9);



- Facilitating of loans to internally displaced persons for land acquisition, house purchasing or construction (Article 17).
- Action Plan on Implementation of the National Strategy in the Area of Human Rights for the Period until 2020:
  - Protection of the rights of internally displaced persons;
  - Ensuring creation of proper conditions for enjoyment and protection of rights and freedoms of internally displaced persons;
  - To provide for the possibility to raise funds from international donors and investors for implementation of the mentioned programme, in particular in terms of provision of accommodation to IDPs.
- Cabinet of Ministers Resolution #819 “Several issues of providing citizens for affordable housing”:
  - A State budget coverage of 50% of the costs of the housing for IDPs and Anti-Terrorist operation participants in the (ATO), and 30% for other citizens with housing conditions below standards;
  - The applicants’ right to choose an investment object is not restricted;
  - The applicant’s right to include housing still under construction;
  - The possibility to reserve a place in the waiting list in case of change in the family status (birth/death/marriage/divorce);
  - The possibility to apply for a loan in any bank of the applicant’s choice.
- Cabinet of Ministers Order on the disbursement of funds under a budgetary programme on preferential long-term mortgage loans to IDPs and ATO/JFO participants:
  - Its total budget – 200 million UAH – is equally divided between IDPs and ATO/JFO participants;
  - The Ministry for Development of Communities and Territories allocates respective financial contributions to oblasts depending on the number of submitted applications. A special commission at the Ministry will distribute loans among applicants;
  - The loan would be granted for 20 years with 3% interest rate for purchasing a flat in a multi-storeyed building or a single-flat house. Participants select housing options themselves. A borrower should pay at least 6% of the housing cost at the signing a loan agreement.

#### Next Steps:

- Extend the validity of the Strategy on IDP Integration beyond 2020 or alternatively elaborate a new comprehensive strategy for the period of up to five years;
- Allocate increased funding in the State Budget for existing IDP housing programs (e.g., those through the State Youth Housing Fund and MTOT);
- Develop a wider array of housing solutions for IDPs.

## 4.2. Political Rights of IDPs (local elections)

According to the Ministry of Social Policy, there are 1,428,000 registered IDPs (as of 10 December 2019) in Ukraine. After 5 years of conflict, the number of IDPs who intend to stay in areas of displacement is rising and in 2018 for the first time has exceeded the number of IDPs who intend to return to their areas of origin: only one per cent expressed an intention to return home in the near future and 38 per cent stated that they did not plan to return home, even after the end of the conflict. Current policies link various rights and benefits to IDP registration. IDPs do not have permanent residence registration in their host communities. Thus, they cannot vote in local elections and are not formally included in these communities.

#### Positive Developments:

In December 2019, Parliament adopted a new Electoral Code giving IDPs the right to vote in local elections. This is a positive development, which means that in 2020, IDPs will have the right to vote in local elections for the first time. It will be important to ensure that IDPs have information about how to meaningfully exercise this right. On 19 December 2019, the Parliament of Ukraine adopted the Electoral Code of Ukraine. Provisions of the Code shall ensure that IDPs can vote in local elections.



## Gaps and Benefits of Improving the Legislative Framework:

Since IDPs lack residence registration in the locality where they now live, they are not eligible to vote in local elections, or for majoritarian seats in parliament. This means that local leaders are less likely to take their interests into consideration.

### Addressing the above would lead to:

- IDPs enjoying equal rights with other citizens to vote in local elections, as well as for the majoritarian seats in parliament. Their interests would be taken into consideration in decision-making at local level, which is increasingly important in the context of de-centralization. IDPs would integrate and find a durable solution;
- IDPs' being considered in local planning and budgeting, as they would be registered as local residents;
- IDPs having an opportunity to hold both a "residence registration" and "factual residence registration", being able to preserve residence registration in NGCA or Crimea, may help to maintain ties with their homes and restore their rights in the future.

## Existing International Law/Policy Framework:

- **International Covenant on Civil and Political Rights.** The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant (Article 3).
- **PACE Resolution 2198 Recommendation.** Provide mechanisms for ensuring the voting rights of IDPs in all elections, including at local level (11.11).
- **Guiding Principles, Principle 22:** Internally displaced persons, whether they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights: (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right.
- **Recommendation Rec (2006)6 of the Committee of Ministers to member states on internally displaced persons.** Member states should take appropriate legal and practical measures to enable IDPs to effectively exercise their right to vote in national, regional or local elections and to ensure that this right is not infringed by obstacles of a practical nature.

## Existing National Law/Policy Framework:

- IDP Strategy. Support of host communities in the progress of integration of IDP;
- Action Plan on Implementation of the National Strategy in the Area of Human Rights for the Period until 2020: to develop and submit for consideration to the Cabinet of Ministers of Ukraine the draft law on regulation of the mechanism for protection of electoral rights of IDPs, in particular regarding exercise of the electoral right at the local elections based on passport and IDP certificate(121.7).

### Next Steps:

- Re-register draft law #8342 and bring for a vote.

## 4.3. IDP Inclusion and Durable Solutions for IDPs from Autonomous Republic of Crimea

According to the Ministry of Social Policy, there are 1,428,000 registered IDPs (as of 10 December 2019) in Ukraine. After 5 years of conflict, the number of IDPs who intend to stay in areas of displacement is rising and in 2018 for the first time has exceeded the number of IDPs who intend to return to their areas of origin: only one per cent expressed an intention to return home in the near future and 38 per cent stated that they did not plan to return home, even after the end of the conflict. Current policies link various rights and benefits to IDP registration. IDPs do not have permanent residence registration in their host communities. Thus, they cannot vote in local elections and are not formally included in these communities.

### Positive Developments:

The Ministry of Veterans Affairs, Temporarily Occupied Territories and IDPs (MVTOT) has committed to "the reintegration of IDPs and persons residing within the non-government controlled areas (NGCA) in Donetsk and Luhansk regions and Crimea into the Ukrainian environment" under the Cabinet of Ministers' Programme for the next 5 years, adopted on 4 October.



## Gaps and Benefits of Improving the Legislative Framework:

The legal framework has created specific challenges for IDPs from Crimea related to documentation, freedom of movement and access to social and economic rights, particularly to banking. IDPs from Crimea are considered 'non-residents' for the purposes of banking.

### Addressing the above would lead to:

- Persons from Crimea being able to access social and economic rights on a non-discriminatory basis without necessarily having to register as an IDP;
- Persons from Crimea having equal access to banking services.

## Existing International Law/Policy Framework:

- Resolution adopted by the General Assembly on 19 December 2017 [on the report of the Third Committee (A/72/439/Add.3)] 72/190. Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine:
  - 6. Supports the efforts of Ukraine to maintain economic, financial, political, social, informational, cultural and other ties with its citizens in the occupied Crimea in order to facilitate their access to democratic processes, economic opportunities and objective information.

## Existing National Law/Policy Framework:

- **Law of Ukraine №1636-18** "On creation of a free economic zone "Crimea" and the specificity of economic activity in the temporarily occupied territory of Ukraine";
- **Law of Ukraine №1207-18** "On ensuring the rights and freedoms of citizens and legal regime in the temporarily occupied territory of Ukraine";
- **Cabinet of Ministers order №218** "On approval of a plan of measures aimed at realisation of certain principles of the state internal policy regarding the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol".

### Next Steps:

- Review the text of draft law #6383, particularly to address the issue of access to banking services, then re-register it for voting in the new parliament.



## 5. Access to Pensions and Social Benefits

As of August 2014, 1,278,200 pensioners were registered in the NGCA. In November 2019, as reported by the Pension Fund, 622,200 pensioners, approximately 6% of the total number of registered pensioners countrywide, with residence registration in the NGCA continued to receive pensions. The number of persons receiving pensions has dropped sharply, by nearly 60 per cent since 2016, when restrictive government policies have played a major role in reducing access to pensions for persons from NGCA. In 2018, the number of persons receiving pensions was fluctuating from 573,900 in March to 470,000 in July and rose back to 562,000 in December. These figures demonstrate that based on verification requirements the Pension Fund continued to suspend pensions of IDP-pensioners, who were suspected of not residing permanently in the GCA.

### Positive Developments:

Following extensive advocacy work carried out by the Parliamentary Human Rights and Social Policy Committees, on 26 November 2019, the draft law No. 2083-d<sup>1</sup> was registered in the Parliament, which establishes a mechanism on paying pensions to conflict-affected population and de-link access to pensions from IDP registration. On 5 February 2020, the Parliament did not adopt the law and it is sent for a revision by the Committee on Social Policy and Veterans. The law would allow NGCA residents to apply for a pension in any department at GCA and get access to their pensions without a linkage as to their place of registration or residence.

### Gaps and Benefits of Improving the Legislative Framework:

- If persons have held residence registration in NGCA, they must maintain IDP registration in order to access pensions and social benefits. This is problematic for two groups of pensioners;
- People who want to change their place of residence registration lose access to their pensions;
- Persons who reside in NGCA cannot receive their pensions unless they undergo several additional administrative steps. They must register as an IDP, enter GCA at least once in sixty days, undergo verification and provide an address in GCA, even though they do not actually reside there;
- In cases where the courts have awarded payment of arrears to individuals illegally deprived of their pensions, the state has not paid out these arrears.

### Addressing the above would lead to:

- ensuring that older and vulnerable people have adequate financial resources to meet their basic needs;
- preventing discrimination in the area of social security and pensions;
- promoting social cohesion with persons living in NGCA;
- facilitating integration of IDPs;
- reducing the administrative burden of conducting verification of IDPs for the purpose of pension payments;
- mitigating the risk associated with the increasing volume of unpaid pension arrears;
- fulfilling international human rights obligations.

### Existing International Law/Policy Framework:

- International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to social security, including social insurance (Article 9). Particular attention should be paid to persons residing in remote, disaster or conflict affected areas. The right to pension is interpreted as being of pecuniary nature and thus regarded as falling within the scope of the right to property.
- Protocol I to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1 (right to property), provides for the entitlement to the peaceful enjoyment of possessions, including pensions.
- The principle of non-discrimination is enshrined in Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Discrimination based on place of residence or registration as an IDP is unacceptable.
- Guiding Principles on Internal Displacement, Principle 5 (protection from displacement) obliges all authorities to prevent and avoid conditions that might lead to displacement of persons. Policies that require someone to be displaced in order to access their pensions are in violation of this principle.

1. As of 18 February 2020, the reference number of the draft law is 2083-1.



- UPR review 116.128 Provide all eligible citizens with the benefits to which they are entitled, including pensions and social payments, regardless of their status as displaced persons or their place of residence in their own country (Switzerland):
  - “Advocate for the implementation of all possible measures that would facilitate protection of the rights of Ukrainian citizens living in NGCA and the Autonomous Republic of Crimea. This includes access to pensions and social benefits”.
- PACE Resolution 2198, Recommendation 11.14 - simplify the procedure for receiving social and pension payments by disconnecting them from the IDP registration process, by amending Cabinet of Ministers Resolutions Nos. 365, 505 and 637, as well as any other relevant normative acts;

### Existing National Law/Policy Framework:

- Law 2268 (on sovereignty over Donetsk and Luhansk regions):
  - Individuals, regardless of whether they are registered as internally displaced persons or under a special legal status, and legal entities, retain the right of ownership, other real property rights, including real estate that includes land plots located in the temporarily occupied territories in the Donetsk and Luhansk Oblasts, if such property was acquired in accordance with the laws of Ukraine (Article 2).
  - The main areas of protection of the rights and freedoms of the civilian population in the temporarily occupied territories in the Donetsk and Luhansk oblasts are: 4) Assistance in the provision of socioeconomic, environmental and cultural needs, by implementing measures determined by the MTOT (Article 6).
- Law on IDPs, Art.7 concerns social, economic and educational rights. It establishes the link between the IDP registration and access to social benefits and pensions (part 2: Individuals registered as IDPs shall have access to pensions at their place of factual residence);
- National Human Rights Strategy:
  - Protection of the rights of internally displaced persons;
  - The conditions of social adaptation of internally displaced persons at a new place of residence need improvement;
  - Expected outcomes: comprehensive measures are taken to support and maintain social adaptation of IDPS are observed and protected, their educational and other needs are met.
- National Human Rights Action Plan. Point 128.1 requests the elaboration of the mechanism to pay pensions to residents of NGCA;
- IDP Integration and Durable Solutions Strategy, Pension and social coverage. It requests establishing, at the legislative level, of unified approaches to ensure proper and full implementation of IDP rights to pensions and social protection without restrictions as compared with other citizens.

### Next Steps:

- Adopt draft law no. 2083-d.
- Cabinet of Ministers to adopt a resolution relating to payment of pension arrears. A draft has been prepared by the UN and NGOs in cooperation.





## 6. Birth and Death Registration

The total of 42 933 birth certificates were issued based on the simplified court procedure since February 2016 and up to 30 September 2019. A review of the 2016- three quarters of 2019 data suggests that an estimated 44% of children born in Donetsk and Luhansk NGCA (as per information available in open sources) and around 13% of those born in the Autonomous Republic of Crimea have obtained Ukrainian birth certificates. In the first half of 2018, Ukraine took the first steps towards establishing an administrative procedure for birth registration of children born in NGCA. Law # 2268 excludes “documents certifying facts of birth or death of a person” from the general rule of the invalidity of documents issued by the de facto entities in NGCA in Donetsk and Luhansk regions (this exception does not work for Crimea). These documents presumably could be attached to applications for birth/death registration to a civil registry office in Ukraine. The Government is yet to establish a procedure to ensure implementation of this provision.

### Positive Developments:

The discussions are ongoing regarding elaboration of the draft legislation that would set out framework procedures on administrative procedure for both NGCA in the east and for the Autonomous Republic of Crimea.

### Gaps and Benefits of Improving the Legislative Framework:

There is a need to create an effective administrative system of birth and death registration, as over 50% of children born in NGCA starting from 2014 are still not registered. The current judicial procedure is lengthy (between two and four weeks depending on courts’ capacities) and costly.

#### Addressing the above would lead to:

- An increasing proportion of children born in NGCA and Crimea holding Ukrainian birth certificates;
- These children will be able to access health services, enter Ukrainian schools, obtain Ukrainian passports and exercise all rights associated with citizenship;
- Prevention of statelessness for children born in NGCA;
- Promoting social cohesion by establishing the initial bond between the state and an individual citizen by means of birth registration.

### Existing International Law/Policy Framework:

- Convention on the Rights of the Child, Article 7. The child shall be registered immediately after birth;
- General Comment No.7 of the Committee on the Rights of the Child, paragraph 25: “the Committee recommends that States parties take all necessary measures to ensure that all children are registered at birth. This can be achieved through a universal, well-managed registration system that is accessible to all and free of charge. An effective system must be flexible and responsive to the circumstances of families, for example by providing mobile registration units where appropriate”;
- International Covenant on Civil and Political Rights:
  - Everyone shall have the right to recognition everywhere as a person before the law (Article 16);
  - Every child shall be registered immediately after birth and shall have a name (Article 24.2);
  - Every child has the right to acquire a nationality (Article 24.3).
- PACE Resolution 2198 Recommendation 11.15 “introduce administrative procedures for Ukrainian citizens living in the temporarily occupied territories for the regularisation of their civil document”, and 11.16 “develop a mechanism to ensure the rights of people who left Ukraine after the outbreak of the war in 2014 and, in particular, ensure that they are not at risk of statelessness.”

### Existing National Law/Policy Framework:

- Law of Ukraine №2398-17 “On Civil Documents registration”;
- Law of Ukraine № 990-19 “On Amendments to the Civil Procedure Code of Ukraine on establishing the fact of the birth or death of a person in the temporarily occupied territories of Ukraine”;
- Article 2(3) of the law ‘On particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territory of the Donetsk and Luhansk regions of Ukraine’ introduced an exception to the general rule of invalidity of documents issued in NGCA for documents certifying the facts of birth or death of a person, thus allowing to attach such documents to the applications for registration of birth or death by a civil registry office. However, this exception is introduced only for documents issued in NGCA in the Donetsk and Luhansk regions, and not in Crimea.



### Next Steps:

- Adopt either a draft law or a Cabinet of Ministers' resolution that will establish an administrative procedure for birth registration. The procedure should be flexible and responsive to the circumstances of families living in NGCA or Crimea. It should simplify the documentary requirements and allow for registration services to be offered close to the 'contact line.'
- Although the administrative procedure could be adopted by the Cabinet of Ministers, there must be a legislative amendment (to the law 'on legal regime at the temporarily occupied territory of Crimea') to ensure that residents of Crimea enjoy the same access to an administrative procedure.