

May 2015



OFF TO A SHAKY START: UKRAINIAN GOVERNMENT RESPONSES TO INTERNALLY DISPLACED PERSONS

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Support for this publication was generously provided by the Swiss Federal Department of Foreign Affairs.

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Front Cover Photograph: Nina Kutukova in one of four remaining residence in this bombed out apartment building in Ukraine. (European Commission DG Echo, UNHCR/Y.Gushev, Eastern Ukraine, March 2015).

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ACKNOWLEDGEMENTS

With thanks to Jen Boger, Tessa Pulaski, Louise Virenfeldt, and Leah Denman for their help in finalizing this report. The authors would also like to thank Alexander Galkin and Dmytro Natalukha.

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INTERNAL DISPLACEMENT AND THE FRAMEWORK FOR NATIONAL RESPONSIBILITY

Internal displacement is one of the major humanitarian, human rights, and security problems in the world today and the number of internally displaced persons (IDPs) continues to increase. In early May 2015, the Internal Displacement Monitoring Centre released its annual global overview of internal displacement, finding that the number of IDPs displaced by conflict and violence had increased to 38 million people – the highest number ever recorded.¹

Because IDPs remain within the borders of their own country, it is their state that bears primary responsibility for protecting and assisting them and for preventing arbitrary displacement in the first place. This principle is affirmed in international standards, notably the *Guiding Principles on Internal Displacement*,² and is regularly reaffirmed by both the international community and by individual states. Exercising this responsibility, however, is often difficult in practice. Sometimes governments lack adequate capacity to address displacement, particularly when displacement is sudden, unprecedented, and large-scale. In other cases, there may be a lack of political will to acknowledge the scale of displacement and to respond effectively to the needs of internally displaced populations. In still other cases, national authorities deliberately cause internal displacement, or at least condone the circumstances and actions that compel people to flee. Or, they may exhibit solidarity with the internally displaced, but insist that the only solution to their displacement is return.

***“...in the end, if the state doesn’t
do or allow protection to be done,
not much can be done.”***

**- António Guterres, United Nations High
Commissioner for Refugees**

³

¹ “The Global Overview 2015: People internally displaced by conflict and violence,” Internal Displacement Monitoring Centre, May 6, 2015, <http://www.internal-displacement.org/media-centre/global-overview-2015-people-internally-displaced-by-conflict-and-violence>.

² “The Guiding Principles on Internal Displacement,” UN OCHA, September 2004, <http://www.brookings.edu/~media/Projects/idp/GPEnglish.pdf>.

³ “UNHCR at 60: A Discussion with António Guterres, the United Nations High Commissioner for Refugees,” Brookings Institution, May 5, 2011, http://www.brookings.edu/events/2011/0505_unhcr.aspx.

As reflected in Principle 3 of the *Guiding Principles on Internal Displacement* (“Guiding Principles”), national authorities have the primary duty and responsibility to protect and assist IDPs living within their borders. The Guiding Principles themselves set forth both the rights of IDPs and the obligations of governments toward these populations. In order to provide more specific guidance to governments about how to exercise their national responsibility for IDP protection and assistance, in 2005 the Brookings-Bern Project on Internal Displacement developed *Addressing Internal Displacement: A Framework for National Responsibility* (hereafter “Framework for National Responsibility” or “Framework”).⁴ This framework sets out twelve broad areas in which states can directly contribute to the mitigation and resolution of internal displacement (see text box, below).

IDP Protection and Assistance: 12 Benchmarks for Action

1. Prevent displacement and minimize its adverse effects
2. Raise national awareness of the problem
3. Collect data on the number and conditions of IDPs
4. Support training on the rights of IDPs
5. Create a legal framework for upholding the rights of IDPs
6. Develop a national policy on internal displacement
7. Designate an institutional focal point on IDPs
8. Encourage national human rights institutions to integrate internal displacement into their work
9. Ensure the participation of IDPs in decision-making
10. Support durable solutions
11. Allocate adequate resources to the problem
12. Cooperate with the international community when national capacity is insufficient

This is not an exhaustive list of the measures expected of governments, but rather is intended to give guidance to governments about how to translate their responsibilities into concrete actions. The Framework offers specific suggestions and concrete indicators about actions to take. (For example, the benchmark on data collection suggests that such efforts encompass all categories of IDPs, be disaggregated, and

⁴ “Addressing Internal Displacement: A Framework for National Responsibility,” Brookings Institution, April 2005, <http://www.brookings.edu/research/reports/2005/04/national-responsibility-framework>.

protect privacy.) The Framework was presented to the UN Commission on Human Rights in 2005, has been translated into 11 languages and has been used by many governments and international organizations over the past decade. It has also proven to be a useful tool for assessing the extent to which governments are exercising their responsibilities. A recent study of fifteen governments' responses to internal displacement found that none had satisfactorily met all of these benchmarks – even in situations where large numbers of people had been displaced for decades.⁵ The study also acknowledged that some of the benchmarks are easier to implement than others. For example, it is usually not difficult to “name a focal point on IDPs,” but it is much more difficult to prevent displacement or to find solutions for those who have been displaced.

⁵ Elizabeth Ferris, Erin Mooney, and Chareen Stark, *From Responsibility to Response*, The Brookings Institution, November 1, 2011, <http://www.brookings.edu/research/reports/2011/11/responsibility-response-ferris>.

DISPLACEMENT IN UKRAINE

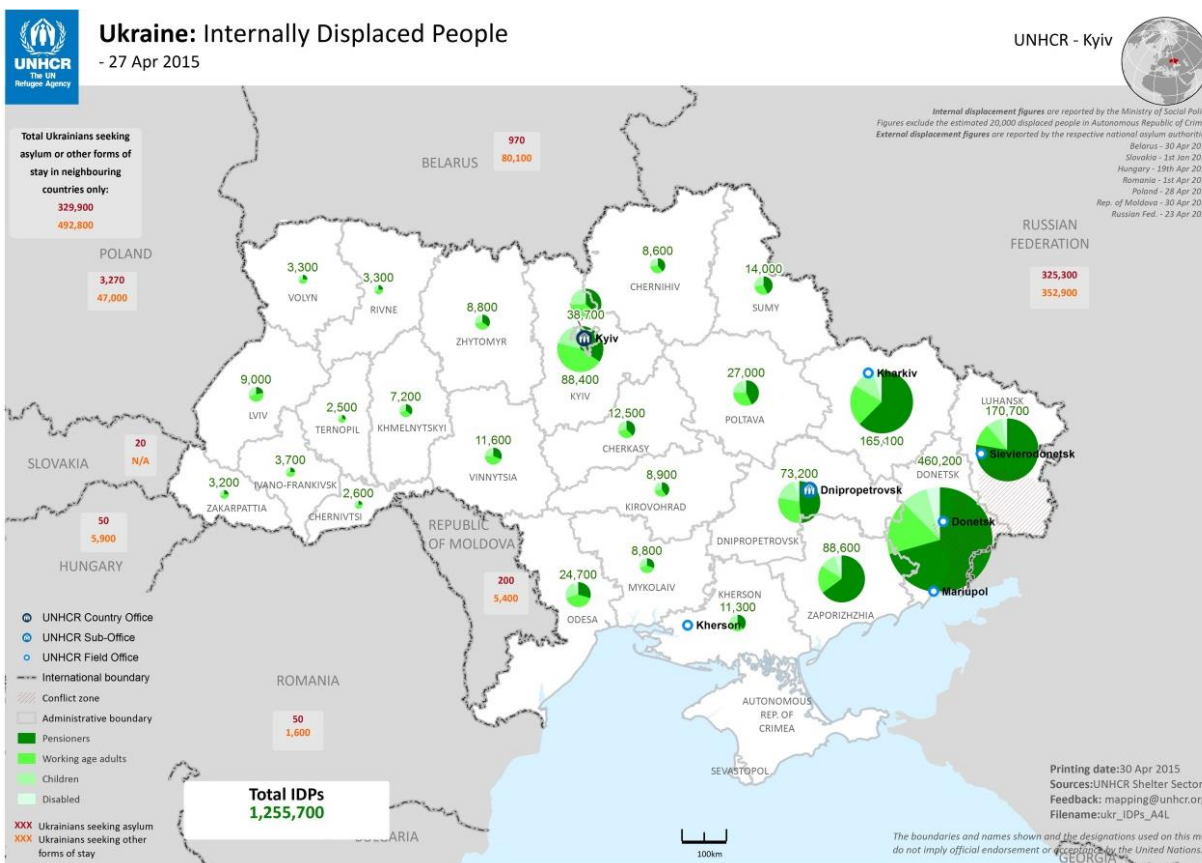
This study, jointly conducted by the Right to Protection (HIAS Ukraine) and the Brookings-LSE Project on Internal Displacement, seeks to use the 12 benchmarks of the Framework for National Responsibility to assess the Ukrainian government's response to the growing number of IDPs in the country.

Internal displacement is a new phenomenon in Ukraine. Until March 2014, the country's experience with forced migration had been limited to relatively small numbers of refugees.⁶ The first wave of internal displacement occurred in March 2014 and in one year the official number of registered IDPs has climbed to over 1.255 million.⁷ Any government faced with such a rapid and large-scale population displacement would be hard-pressed to respond quickly and effectively. This study on the Ukrainian government's response is intended to provide guidance to the government and its supporters to respond to the challenges of IDPs, both in the emergency phase and in the longer-term. And unfortunately experience suggests that displacement is likely to become long-term. While people in most conflict situations flee their homes with the expectation that they will be able to return quickly, continued conflict or stalemate means that they remain displaced far longer than anyone anticipated. Measures adopted at the height of the crisis to provide immediate emergency assistance have a way of remaining in place over a period of years. The Ukrainian government would be well-advised to not only develop and implement policies to assist and protect IDPs now but to plan for the possibility that these measures will need to last for some time.

⁶ In 2014 there were 1,173 asylum seekers in Ukraine, of whom 105 were granted refugee status and 222 were given complementary protection; see "Asylum statistics in Ukraine, 2010-2014," UNHCR Kyiv, accessed May 6, 2015, <http://unhcr.org.ua/en/resources/statistics>.

⁷ "Ukraine: Internally Displaced People," UNHCR Kyiv, April 27, 2015, <http://unhcr.org.ua/attachments/article/1244/map45.jpg>.

Internally Displaced People in Ukraine⁸



Overview of displacement in Ukraine

As occurs throughout the world, internal displacement in Ukraine is the product of a political crisis. Ukraine is culturally and politically divided as evidenced through the 2010 presidential election in which the candidate sympathetic to Russia, President Viktor Yanukovich, won the votes of many ethnic Russians in southeast Ukraine and Crimea, but lost to the opposition in the east.⁹ In February 2014, President Yanukovich disappeared, following protests against his administration over relations with the European Union and tension between the president and parliament.¹⁰ Parliament and protestors subsequently took control of the government. In the immediate aftermath of the political transition in Kiev, pro-Russian rebels took aggressive actions, seizing key buildings in the Crimean capital, Simferopol. The Russian parliament approved

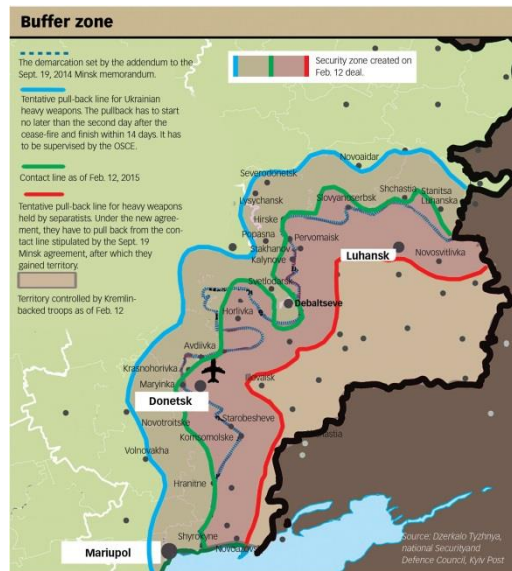
⁸ "Ukraine: Internally Displaced People," UNHCR Kyiv, April 27, 2015, <http://unhcr.org.ua/attachments/article/1244/map45.jpg>.

⁹ Andrew Higgins, "With President's Departure, Ukraine Looks Toward a Murky Future," The New York Times, February 22, 2014, <http://www.nytimes.com/2014/02/23/world/europe/with-presidents-departure-ukraine-looks-toward-a-murky-future.html>.

¹⁰ "Ukraine crisis: Timeline," BBC News, November 13, 2014, <http://www.bbc.com/news/world-middle-east-26248275>.

President Vladimir Putin's request to use force if needed in Ukraine to protect Russian interests.¹¹ On March 16, 2014, with the alleged support of 97 percent of voters, Crimea voted to secede from Ukraine and join the Russian Federation, which welcomed the idea of unification.¹² In April 2014, President Putin went so far as to refer to a large swathe of southeast Ukraine, beyond Crimea, as "New Russia"—a term that historically referred to the area north of the Black Sea that the Russian empire had conquered in the 1700s. On multiple occasions, President Putin has also announced a desire to take more of Ukraine under the control of the Russian Federation.¹³ In April 2014, armed groups in Donetsk and Luhansk, in eastern Ukraine, began to seize weapons and municipal buildings, beginning an ongoing fight between armed rebel groups and the Ukrainian government.¹⁴ The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) reports that at least 3.9 million people have been directly affected by the conflict and OHCHR reports that there have been at least 7,000 deaths and 18,000 wounded since the conflict began.¹⁵

Map of Conflict Zones between Ukraine and Russia¹⁶



¹¹ Ibid.

¹² Ibid.

¹³ David M. Herszenhorn, "Away From Show of Diplomacy in Geneva, Putin Puts On a Show of His Own," New York Times, April 17, 2014, <http://www.nytimes.com/2014/04/18/world/europe/russia-ukraine.html>.

¹⁴ "Ukraine: Situation report No. 31 as of 13 March 2015," UN OCHA, March 13, 2015, <http://reliefweb.int/report/ukraine/ukraine-situation-report-no-31-13-march-2015>, p. 6.

¹⁵ "Ukraine: Situation report No. 38 as of 1 May 2015," UN OCHA, May 1, 2015, https://www.humanitarianresponse.info/en/system/files/documents/files/ocha_ukraine_situation_report_38_-_1_may_2015.pdf.

¹⁶ "Buffer Zone," Kyiv Post, February 12, 2015, <http://www.kyivpost.com/content/ukraine/giving-peace-another-chance-380495.html>.

Displacement in Crimea

The first wave of displacement occurred in March 2014 prior to Crimea's referendum to join the Russian Federation, followed by a second wave after Russia's annexation of Crimea. The displaced population consisted of pro-Ukraine activists, journalists, government officials, and Crimean Tatars, a Muslim ethnic minority group.¹⁷ According to scholar Gwendolyn Sasse, since the Russian annexation of Crimea, "the most prominent Crimean Tatar leaders have been banned from Crimea, and the main political organization of the Crimean Tatars, the Mejlis, has been declared illegal. People have vanished or have been arrested, and demonstrations and the use of national symbols have been suppressed."¹⁸ According to the State Emergency Service of Ukraine, approximately 20,000 of the country's 1.2 million IDPs are from Crimea although as discussed below, the actual numbers of IDPs are likely to be far higher.¹⁹ There are no estimates, either official or unofficial, on the number of IDPs who are Crimean Tatars.

Displacement in the East

Since June 2014, fighting has been widespread in the eastern part of the country between the Ukrainian army and pro-Russian separatists that identify as the Donetsk and Luhansk People's Republics.²⁰ Since June, acting Ukrainian President Petro Poroshenko and the Ukrainian military have engaged in an anti-terrorist operation against pro-Russian separatists in southeast Ukraine. By March 2015, the United Nations Human Rights Office reported that over 6,000 people had died in the conflict.²¹ Armed conflict almost always results in displacement and this was the case in Ukraine.²² Due to ongoing fighting between armed rebel groups and government forces people faced imminent security threats as well as lawlessness, limited supplies, and a disruption of basic services.²³ Currently, a fragile ceasefire is in place but there are serious questions as to what will happen to people who have been displaced by the conflict.

¹⁷ "Ukraine IDP Figures Analysis," Internal Displacement Monitoring Centre, April 2015, <http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/ukraine/figures-analysis>.

¹⁸ Gwendolyn Sasse, "Remember Crimea? A Year Later," Carnegie Europe: Judy Dempsey's Strategic Europe, March 27, 2015, <http://carnegieeurope.eu/strategieurope/?fa=59514>.

¹⁹ "Internally Displaced Persons," UNHCR Kyiv, accessed May 6, 2015, <http://unhcr.org.ua/en/who-we-help/internally-displaced-people>.

²⁰ "Ukraine IDP Figures Analysis," Internal Displacement Monitoring Centre, April 2015, <http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/ukraine/figures-analysis>.

²¹ Frank Jordans, "Ukraine Conflict Death Toll Passes 6,000, UN Human Rights Office Says," The World Post, March 2, 2015, http://www.huffingtonpost.com/2015/03/02/ukraine-conflict-death-toll_n_6782010.html. See also "Report on the human rights situation in Ukraine, 1 December 2014 to 15 February 2015," Office of the United Nations High Commissioner for Human Rights, February 2015, <http://www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf>.

²² "Ukraine IDP Figures Analysis," Internal Displacement Monitoring Centre, April 2015, <http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/ukraine/figures-analysis>.

²³ "Ukraine: Situation report No. 31 as of 13 March 2015," UN OCHA, March 13, 2015, <http://reliefweb.int/report/ukraine/ukraine-situation-report-no-31-13-march-2015>, p. 6.

Estimating numbers of Ukrainian IDPs

According to the United Nations High Commissioner for Refugees (UNHCR), and based on government figures, there are currently at least 1,255,700 registered IDPs in Ukraine.²⁴ However, as is often the case, there are problems with the estimates, in part because of difficulties with the registration system. The actual number of displaced persons could be far higher.

Since the beginning of internal displacement in the country, the Ukrainian government has consistently denied the magnitude of the problem. In a speech on February 27, 2015, Ukrainian Prime Minister Arseni Yatsenyuk stated: "Our official statistics show that there are two million internally displaced persons. These are people who have lost everything. I have started analyzing data beyond the official statistics, and I think that we don't have two million, the figure is much lower than one million."²⁵ However the Kiev-based UN agencies, as well as local and international NGOs, have emphasized that the real number of IDPs could be much higher than those officially registered.²⁶

Registering IDPs

Initially, the Ministry of Social Policy (MoSP) and State Emergency Services (SES) shared responsibility for registering IDPs and the process was somewhat disorganized. In October 2014, Resolution 509 (discussed further below) established a unified registration system for IDPs, administered by the MoSP.²⁷ This resolution provided for legal recognition of IDPs, allowing them to access state support and entitlement to government assistance, pensions, and free housing for a period of up to six months, with the possibility of extension.²⁸ As of March 2015, IDPs have been settling across the country. The most vulnerable IDPs are those who are unable to rent apartments. These individuals, fluctuating in number between 30,000 and 40,000, live in collective centers.²⁹ These IDPs tend to lack savings or jobs, and more often than not are pensioners, people with disabilities, families with two or more children, and single mothers. Additional IDPs have settled in the eastern regions of Kharkiv (165,100), Donetsk (460,200), Luhansk (170,700), Zaporozhia (88,600), and Dnipropetrovsk (73,200).³⁰ Overall, while the new system has improved registration, it has not eliminated all of the difficulties in the state's process of registering IDPs. According to

²⁴ "Ukraine: Internally Displaced People," UNHCR Kyiv, April 27, 2015, <http://unhcr.org.ua/attachments/article/1244/map45.jpg>.

²⁵ "Rebuilding territory liberated in Donbas requires \$1.5 bln – Yatseniuk," UNIAN, February 27, 2015, <http://www.unian.info/economics/1049726-rebuilding-territory-liberated-in-donbas-requires-15-bln-yatseniuk.html>.

²⁶ Wesli Turner, "IDP registration in Ukraine: Who's in? Who's out? And who's counting?" Internal Displacement Monitoring Centre, March 19, 2015, <http://www.internal-displacement.org/blog/2015/idp-registration-in-ukraine-whos-in-whos-out-and-whos-counting>.

²⁷ Ibid.

²⁸ Ibid.

²⁹ "Ukraine IDP Figures Analysis," Internal Displacement Monitoring Centre, April 2015, <http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/ukraine/figures-analysis>.

³⁰ "Ukraine: Internally Displaced People," UNHCR Kyiv, April 27, 2015, <http://unhcr.org.ua/attachments/article/1244/map45.jpg>.

the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), there are still discrepancies between SES and MoSP's IDP registration figures, due to the "fluid and continuous movement of IDPs between places of origin and location of displacement in order to access benefits." The undercounting and double counting of IDPs is undermining humanitarian aid to the region. Additionally, some displaced people have been turned away from the registration process due to MoSP's inadequate capacity to process all IDP applications.³¹ Furthermore, differing definitions under the IDP Law and the Cabinet of Ministers of Ukraine's (Cabinet of Ministers) Resolution 509 have caused confusion among displaced people and MoSP personnel regarding eligibility for registration and benefits.

Resolution 509, in discussing the registration of IDPs says:

"[A] certificate [of registration as an IDP] is a document issued to citizens of Ukraine, foreigners and stateless persons permanently residing on the territory of Ukraine, and are moving from temporarily occupied territory of Ukraine and districts of the antiterrorist operation conduct **or were forced to leave their permanent residence in settlements on the territory where bodies of state power temporarily do not exercise or not exercise in full its powers and moved to the settlements on the territory where bodies of state power exercise their powers in full...**" (*emphasis in the original*).³²

Resolution 509 further states that the applicant may be denied a certificate of registration of internally displaced person if, "1) lack of circumstances that caused internal displacement from the temporarily occupied territory and anti-terrorist operation area; 2) loss or theft of documents certifying his/her identity and the citizenship of Ukraine, until the documents are re-issued."³³ People who left their villages preemptively or fled from territories that were not officially recognized as non-government controlled areas are not classified as IDPs, and therefore are not eligible for the benefits provided to IDPs.³⁴

In addition to difficulties in applying the definition, there have been other impediments to registration. UNHCR reports that the number of IDPs may be higher than the official number since many IDPs do not come forward to government authorities or NGOs out of fear of retaliation against their families, possible confiscation of their property, or because they have found personal means of addressing the situation of being

³¹"Ukraine: Situation report No. 31 as of 13 March 2015," UN OCHA, March 13, 2015, <http://reliefweb.int/report/ukraine/ukraine-situation-report-no-31-13-march-2015>, p. 2.

³² Cabinet of Ministers of Ukraine Resolution 509 (amended), "On registration of internally displaced persons from the temporarily occupied territory of Ukraine and anti-terrorist operation area," UNHCR Kyiv, October 1, 2014, <http://unhcr.org.ua/attachments/article/1231/509amendmentsE.doc>.

³³ Cabinet of Ministers of Ukraine Resolution 509, "On registration of internally displaced persons from the temporarily occupied territory of Ukraine and anti-terrorist operation area," UNHCR Kyiv, October 1, 2014, <http://unhcr.org.ua/attachments/article/1231/509amendmentsE.doc>.

³⁴ Wesli Turner, "IDP registration in Ukraine: Who's in? Who's out? And who's counting?" Internal Displacement Monitoring Centre, March 19, 2015, <http://www.internal-displacement.org/blog/2015/idp-registration-in-ukraine-whos-in-whos-out-and-whos-counting>.

displaced.³⁵ Young men may not identify themselves as IDPs because they want to avoid conscription. Furthermore, many Ukrainians have been unable to register due to technicalities such as not having a government issued form of identification. Additionally, around 6,000 displaced Roma people are unregistered due to a lack of official residency papers.³⁶

Particular impacts on the elderly and children

The officially reported figures indicate that 60 percent of the registered IDPs are elderly,³⁷ while only 15 percent of Ukraine's population is over 65 years of age.³⁸ This disproportionate registration of elderly IDPs suggests that some of these individuals are registering in order to transfer their pension benefits to family members who may not qualify for some reason.³⁹ The elderly are particularly vulnerable not only because their health is sometimes poor and their mobility is often limited, but also because of their reliance on pensions, which have been suspended in conflict zones and nongovernment controlled areas.⁴⁰ However, the Ukrainian government does provide pension benefits to IDPs once they have been registered and have found a temporary place to live in other parts of the country.⁴¹ The crisis has directly affected 1.7 million children, including almost 160,000 children who have been displaced.⁴² Displaced children risk going unvaccinated, have experienced trauma, and have witnessed intense violence, causing them to suffer enormous stress. While they are usually able to attend school, there are some areas in eastern Ukraine that no longer have the capacity to take additional IDP children into their pre-school classes.

Ukrainian refugees/Externally displaced

In addition to internal displacement, many Ukrainians have reportedly sought refuge outside of the country. According to government figures, as of April 30, 2015 the number of Ukrainians who have sought asylum, residence permits, and other forms of

³⁵ "Ukraine IDP Figures Analysis," Internal Displacement Monitoring Centre, April 2015, <http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/ukraine/figures-analysis>.

³⁶ Wesli Turner, "IDP registration in Ukraine: Who's in? Who's out? And who's counting?" Internal Displacement Monitoring Centre, March 19, 2015, <http://www.internal-displacement.org/blog/2015/idp-registration-in-ukraine-whos-in-whos-out-and-whos-counting>.

³⁷ "Ukraine Situation: UNHCR Operational Update, 7 February – 6 March 2015," UNHCR, March 2015, <http://reporting.unhcr.org/sites/default/files/Update%20on%20Ukraine%20Situation%20%239%20-%209MAR15.pdf>.

³⁸ "Population ages 65 and above," World Bank Data, 2013, <http://data.worldbank.org/indicator/SP.POP.65UP.TO.ZS>.

³⁹ Elizabeth Ferris, "Ukraine's internally displaced: 1 million and rising," The Brookings Institution, February 12, 2015, <http://www.brookings.edu/blogs/order-from-chaos/posts/2015/02/12-ukraines-internally-displaced-ferris>.

⁴⁰ "Ukraine crisis taking heaviest toll on women, children and elderly – UN officials," United Nations New Centre, March 19, 2015, http://www.un.org/apps/news/story.asp?NewsID=50377#.VRmo01_D_cs.

⁴¹ "Dealing with Ukraine's critical financial and economic challenges," The Brookings Institution, March 17, 2015, <http://www.brookings.edu/events/2015/03/17-ukraine-finance-natalie-jaresko>.

⁴² "UNHCR Ukraine Operational Update, 11 – 30 April 2015," UNHCR Kyiv, April 30, 2015, <http://reliefweb.int/report/ukraine/unhcr-ukraine-operational-update-11-30-april-2015>.

legal stay in foreign countries is reported to be 822,700 with the majority going to the Russian Federation (678,200) and to Belarus (81,070). In addition there were 3,648 applications for international protection in Germany, 3,270 in Poland, 2,647 in Italy, 1,637 in Sweden, 1,625 in France, and smaller numbers in Moldova, Romania, Hungary, and Slovakia. 674,300, of which 542,800 have gone to Russia, 80,700 to Belarus, and the remaining asylum seekers and externally displaced Ukrainians have gone to Moldova, Poland, Hungary, and Romania.⁴³

Humanitarian assistance in Ukraine

Delivery of humanitarian assistance to IDPs and others affected by the crisis has been difficult because of government limitations on the movement of people, the dismissal of several key government officials due to investigations of corruption, and the presence of mines and unexploded ordnance.⁴⁴ Furthermore, the government has limited deliveries of humanitarian assistance as part of its anti-terrorist policies—trying to limit the transfer of supplies to armed elements in the areas not under its control.

After several rounds of meetings with Ukrainian and international NGOs, the government has recently simplified humanitarian aid access to nongovernment controlled areas. This improved access is in comparison with policies established in January 2015 when a temporary order was adopted to exercise control over the movement of persons, vehicles, and goods along the boundary of the Donetsk and Luhansk regions.⁴⁵

Against this backdrop, we now turn to an analysis of the Ukrainian government's response to internal displacement by looking at the 12 benchmarks of national responsibility. To what extent has the government made progress in exercising its responsibility toward IDPs?

⁴³ Ibid.

⁴⁴ "Ukraine Situation report No. 33 as of 27 March 2015," UN OCHA, April 3, 2015, <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Ukraine%20Situation%20Report%20number%2033.pdf>.

⁴⁵ Webpage on the official website of State Security Service of Ukraine containing extracts from Temporary Order of Exercising Control over the Movement of Persons, Vehicles and Goods along the Contact Line within the Donetsk and Lugansk Regions (published in Ukrainian) http://www.ssu.gov.ua/sbu/control/uk/publish/article?art_id=136476&cat_id=135945.

APPLYING THE FRAMEWORK FOR NATIONAL RESPONSIBILITY TO THE UKRAINIAN GOVERNMENT'S RESPONSE TO IDPS

1. Prevent displacement and minimize its adverse effects

Due to the temporary occupation of the Crimean peninsula and the armed conflict in the eastern part of Ukraine, the government of Ukraine could not realistically avoid internal displacement entirely. Nevertheless, the state's policy towards internally displaced persons and residents of the occupied territories has not been aimed at "minimization of unavoidable displacement and mitigation of its adverse effects."

Aside from the circumstances beyond the government's control (arrival of winter, weakened economic resilience among residents in conflict areas, and intensification of fighting since early January 2015), some government decisions dramatically increased outflows from the uncontrolled areas of Donetsk and Luhansk in December 2014, starting a trend that continued through February 2015.

In mid-November 2014, the Cabinet of Ministers issued Resolution 595, which closed all government offices in non-government controlled areas (NGCAs), halting funding of pensions, social benefits, and other services. The resolution also withdrew support for schools and hospitals. Resolution 637, introduced on November 5, 2014, stated that pensions were only to be paid to registered IDPs residing in government controlled areas (GCAs). Many pensioners who had lived in territories controlled by the armed groups thus had to leave their place of residence in NGCAs and move to GCAs in order to continue receiving their pensions. Ukraine's Central Bank offices also closed, limiting access to cash and banking services. Due to these actions, pensions and social payments are now only available to persons with registered residences in GCAs. This withdrawal of financial services and access to government-supported institutions increased the vulnerability of some of the Donbass region's most desperate residents, prompting outflows from the area.⁴⁶ If these policies had not been introduced, at least some of those displaced may have been able to remain in their communities.

Displacement was also provoked by the fact that access to the affected population in NGCAs was complex. Due to changing regulatory frameworks, getting in and out of the conflict zone was becoming increasingly difficult for humanitarian actors. Since January 21, 2015, personnel from the United Nations, non-governmental organizations and other international organizations have been required to present identification and a copy of a document justifying the need to travel.⁴⁷

In addition to the aforementioned policies, the government has not "take[n] measures to ensure proper accommodation for the displaced, that any displacement is effected in

⁴⁶ "Note on IDPs registration in Ukraine," Ukraine Protection Cluster, March 25, 2015.

⁴⁷ "Ukraine Multi-Sector Needs Assessment (MSNA) report," Ukraine NGO Forum, March 30, 2015, <http://acaps.org/img/documents/u-ukraine-multi-sector-needs-assessment-report-30-mar-2015.pdf>.

conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated."⁴⁸

By mid-February 2015, accommodation capacities in regions neighboring the conflict area were almost exhausted. In fact, new IDPs from conflict-affected regions who arrived at locations such as Sloviansk or Kharkiv were encouraged by the State Emergency Service to leave the area and seek assistance in the western and southern regions of Ukraine.⁴⁹

Despite the efforts of regional authorities, IDP reception centers in many locations were overwhelmed, under-resourced, and unprepared for the high number of new arrivals following the upsurge in fighting in some areas and subsequent need for evacuations. IDPs and those supporting them stressed their urgent needs, which included winter clothes, hygiene kits, diapers, food, non-food items, and medicines (including those needed to treat chronic conditions). Furthermore, there was inadequate disease monitoring and control for contagious diseases such as tuberculosis at IDP reception and transit points. Reports also indicate that there was a lack of shelter to accommodate people, particularly those with special needs or limited mobility, who could not be sent to other regions.⁵⁰ No extra budgetary resources have been allocated to serve the health needs of IDPs. Consequently the health system is overstretched wherever there are displaced people.⁵¹

The United Nations High Commissioner for Human Rights indicated in its report on the human rights situation in Ukraine for the period of December 1, 2014 to February 15, 2015, 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.⁵²

2. Raise national awareness of the problem

Unfortunately, the Ukrainian Government has consistently denied the existence of an IDP crisis and has done little to address the widespread stigmatization of those displaced from their communities by the conflict. The government has issued no message to the public explaining that IDPs are not responsible for what has happened in the country and insisting that they should be extended the same treatment and rights as any other citizens. In reality, IDPs face widespread stigma as it is believed that people from Donbass (Donetsk and Luhansk regions) welcomed Russia's invasion, that

⁴⁸ Framework for National Responsibility, *op cit.*, p. 12.

⁴⁹ "Report on the human rights situation in Ukraine, 1 December 2014 to 15 February 2015," Office of the United Nations High Commissioner for Human Rights, February 2015, <http://www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf>.

⁵⁰ "Report on the human rights situation in Ukraine, 1 December 2014 to 15 February 2015," Office of the United Nations High Commissioner for Human Rights, February 2015, <http://www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf>.

⁵¹ "Ukraine Multi-Sector Needs Assessment (MSNA) report," Ukraine NGO Forum, March 30, 2015, <http://acaps.org/img/documents/u-ukraine-multi-sector-needs-assessment-report-30-mar-2015.pdf>.

⁵² "Report on the human rights situation in Ukraine, 1 December 2014 to 15 February 2015," Office of the United Nations High Commissioner for Human Rights, February 2015, <http://www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf>.

they supported ex-President Yanukovych and are guilty of contributing to the armed conflict in the east. The government has taken no public action to counter this stigma.

The lack of a comprehensive national policy providing for the dissemination of information to and about IDPs, has led to the emergence of a "deeply rooted sense of abandonment" among IDPs who feel that the government has not effectively and meaningfully reached out to them. This vacuum of communication not only increases a sense of frustration and isolation, but also complicates the task of providing useful and timely information.⁵³

A month after the first wave of displacement of residents from Crimea to the "mainland" of Ukraine, the government issued Decree 298-p, in which it instructed ministries and agencies to: (1) ensure through the media, social networks, and by distributing leaflets and other information material that internally displaced citizens of Ukraine know about their rights and obligations, as well as mechanisms for solving their displacement-related problems, and (2) ensure an around the clock "hotline" for internally displaced persons that is staffed by representatives from relevant executive authorities who can provide clarification on the process of resettlement.

Despite the decree, however, outreach efforts were very limited and primarily restricted to online information posted on official websites. Official websites of all executive authorities contained links to an online resource for IDPs: <http://vpo.gov.ua/>. This website included information about contact centers for IDPs, free housing, guidelines for finding work, and suggestions for dealing with other issues. On SES⁵⁴ and MoSP's⁵⁵ websites, there are special pages for the evacuation, provision of assistance, and social protection of IDPs.

Unfortunately, most of the information posted on the government websites was inaccurate, failed to include important information, or was no longer relevant. For example, phone numbers for coordination headquarters were not made available, and information on housing was not updated and soon became obsolete. Furthermore, none of these resources provided any information on the issues affecting host communities. As such, IDPs and other key actors (e.g. NGOs, host communities, and donors) stopped using these online resources.

Aside from this unsuccessful online resource, the government has yet to launch any other source of information on IDP issues (such as paper digests, regular press conferences on television, television advertisements, etc.). In February 2015, Internews published a report, *Ukraine: Trapped in a Propaganda War. Abandoned. Frustrated. Stigmatized*,⁵⁶ which once again highlighted the Ukrainian government's lack of action

⁵³ "Ukraine: Trapped in a Propaganda War. Abandoned. Frustrated. Stigmatized." Internews, February 16, 2015, <http://www.internews.org/research-publications/ukraine-trapped-propaganda-war-abandoned-frustrated-stigmatized>.

⁵⁴ Available only in Ukrainian at <http://www.mns.gov.ua/>.

⁵⁵ Available only in Ukrainian at http://www.mlsp.gov.ua/labour/control/uk/publish/article;jsessionid=1C92F5E6016B07F78B4DD7F00CA6C5DC.app2?art_id=172724&cat_id=36392.

⁵⁶ "Ukraine: Trapped in a Propaganda War. Abandoned. Frustrated. Stigmatized." Internews, February 16, 2015, <http://www.internews.org/research-publications/ukraine-trapped-propaganda-war-abandoned-frustrated-stigmatized>.

in creating effective information campaigns for IDPs and host communities affected by their movements.

IDPs outside NGCAs, as well as residents and IDPs inside NGCAs, have mostly been relying on information passed by word-of-mouth, through mobile phones and social media (specifically Facebook and VKontakte). These avenues of information have frequently been plagued with misinformation and rumors.⁵⁷ Other important sources of information include local media, local volunteer groups and churches, Russian television channels (predominantly among the elderly from NGCAs who are largely cut off from mobile phones and the Internet), and national television channels (mostly 1+1, Inter, STB, ICTV, and Kanal, which are privately funded).⁵⁸

The Internews report did not list a single government-sponsored source of information as a credible resource for IDPs. In reporting on the IDP crisis in Ukraine, Internews noted:

“IDPs do not seem to be fully aware of eligibility criteria and/or what aid they are able to access if eligible to do so. This increases expectations of displaced communities and feeds further frustration...

IDPs who fled from non-government controlled areas have been left ‘shocked and traumatized’ and many are struggling to integrate. Despite the generosity shown by local residents, negative perceptions have arisen among host communities who see IDPs being favored by ‘positive discrimination.’⁵⁹ This increases stigmatization and affects their ability to rent accommodation or find jobs... Civil society organizations, local citizens and the diaspora have filled the communications void left by the Ukrainian government.”⁶⁰

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Positive discrimination refers to situations in which host communities see IDPs receiving special favor and benefits, when host community members themselves may be quite destitute and in need of assistance as well.

⁶⁰ “Ukraine: Trapped in a Propaganda War. Abandoned. Frustrated. Stigmatized.” Internews, February 16, 2015, <http://www.internews.org/research-publications/ukraine-trapped-propaganda-war-abandoned-frustrated-stigmatized>.

3. Collect data on the number and conditions of IDPs

According to the Cabinet of Ministers' Resolution 298-p, *On approval of a plan of additional measures for the temporary placement of citizens of Ukraine who are moving from the Autonomous Republic of Crimea and City of Sevastopol to other regions of Ukraine* (dated April 1, 2014), since the very beginning of the displacement crisis, regional offices tasked with finding accommodations for citizens moving out of the Autonomous Republic of Crimea and City of Sevastopol into other regions of Ukraine were obliged to maintain a paper registry of citizens making this transition.⁶¹ On a daily basis, these offices were supposed to inform the Interdepartmental Coordination Headquarters about the number of people temporarily being hosted on regional headquarters' premises. For almost half a year, this paper-based registry, which was maintained by SES, was the only aggregated source of information about IDPs and their living conditions.

IDPs who did not ask for shelter in state-allocated premises were not taken into account in the SES registry. As such, they fell out of the State's view and were largely, if not entirely, unaccounted for by state-backed efforts to collect data on IDPs. Until the introduction of MoSP's electronic registration system, the government made no additional attempts to collect information on IDP issues (no surveys, censuses, etc.).

State-based IDP registration is heavily influenced by Soviet traditions, including the continued use of a domicile registration system based on the old *propiska* system. Under the *propiska* system, people were required to maintain "internal passports," which are tied to a person's fixed place of residence. Under that system, and to a significant extent under the current registration regime, a person's legal status and access to privileges and benefits are closely linked to his or her registered place of residence.⁶² Because changing one's official residence in the internal passport can be a cumbersome process, IDP registration is seen as a way to connect one's usual place of residence to one's temporary place of residence during displacement.⁶³

In late December 2014, the government began to transition from the SES paper-based methodology for IDP registration to the MoSP-managed electronic system, which tracks and aggregates information more rapidly and effectively. MoSP uses a formal registration procedure that collects information at local social protection offices. Regional offices then aggregate the formal submissions and check data at the regional level. Then, a central registry office further aggregates IDP registration information at the national level. The switch to the MoSP-driven tracking system has led to an increase of 400,000 registered IDPs. Electronic registration has been seen as a useful tool.⁶⁴

Nevertheless, there is still concern that the current MoSP IDP registration system is not providing an accurate account of the movement of people in real time. The discrepancy

⁶¹ The text of the resolution can be found at: <http://zakon0.rada.gov.ua/laws/show/298-2014-%D1%80>. It should be noted that this Resolution lost its validity on June 26, 2014, as on June 11, 2014 a new resolution, No. 588-p was adopted by the Cabinet of Ministers "On issues of social security of citizens of Ukraine who moved from temporarily occupied territory and areas of conducting of antiterrorist operation."

⁶² "Note on IDPs registration in Ukraine," Ukraine Protection Cluster, March 25, 2015.

⁶³ Ibid.

⁶⁴ "Note on IDPs registration in Ukraine," Ukraine Protection Cluster, March 25, 2015.

between the real and registered numbers of IDPs is a major hindrance in the delivery of assistance.⁶⁵

According to the MoSP, 1.1 million persons are registered as internally displaced and as noted above, UNHCR has reported that another 822,000 have taken refuge in other countries.⁶⁶ Despite the high number of people being officially registered as IDPs with the Ukrainian government, there are still a significant number of people who are not being registered as IDPs in the state system because of a multitude of difficulties with the registration process.

During a recent meeting on IDP registration, the Ukraine Protection Cluster highlighted the following problems still affecting the collection of data on the number and conditions of IDPs.⁶⁷

1. Roma IDPs are not registered because they never had identification documents.
2. The MoSP does not apply a consistent procedure to registration and social workers do not help people with the registration process.
3. Procedures that are normally considered protective (e.g. the requirement to prove legal guardianship over a child) are preventing the registration of unaccompanied and separated children travelling with extended family or other caregivers.
4. IDPs who do not need assistance are not registering with the MoSP. Some people may also avoid registration if they see an associated risk with doing so (e.g. single men of mobilization age afraid of being conscripted into service).
5. A potentially large group of unregistered IDPs are displaced persons from territories not listed by the government. According to legislation, these people are not considered IDPs.
6. Foreigners, stateless people, people who live in the conflict-affected areas but do not have that domicile registered in their internal passports, as well as those who were displaced into the territories controlled by armed groups do not fall within the Ukrainian government's official definition of IDPs. As such, these people do not receive any government-sponsored support for their displacement.
7. The Cabinet of Ministers amended Resolution 509 on IDP registration, introducing a mechanism for the verification of registered IDP addresses by the State Migration Service. Non-confirmation of addresses will lead to the closure of IDP files in the Government database and cancellation of IDP certificates by the Ministry of Social Policy. This is problematic because many IDPs registered with temporary addresses as they tried to find more secure accommodations. Furthermore, many IDPs have found lodging with host communities that are reluctant to officially declare that they are housing IDPs. Landlords who officially lease out their apartments are obliged to pay a 15 percent income tax on their

⁶⁵ "Ukraine Multi-Sector Needs Assessment (MSNA) report," Ukraine NGO Forum, March 30, 2015, <http://acaps.org/img/documents/u-ukraine-multi-sector-needs-assessment-report-30-mar-2015.pdf>.

⁶⁶ "Note on IDPs registration in Ukraine," Ukraine Protection Cluster, March 25, 2015.

⁶⁷ Ibid.

earnings. In an effort to avoid this tax, as many as 99 percent of private landlords enter into unofficial agreements with renters. Because these arrangements are unofficial (and illegal), landlords do not want to provide proof that IDPs are living in their properties. In turn, this prevents IDPs from officially registering, as they cannot provide proof of a domicile address.

8. The amendment to Resolution 509 may also affect IDP pensioners who had to register in order to receive state pensions. When the government ceased to provide benefits to those living in NGCAs, many pensioners had to “move” away from their homes and register as IDPs in GCAs in order to transfer their benefits to a place where they could access them. Because pensions are paid once a month, however, many pensioners travel back and forth between their real homes in NGCAs and their IDP-registered homes in GCAs simply to collect their monthly pensions. This process, wherein pensioners only come to the GCA for a day or less to collect their benefits, has been dubbed “pension tourism.” By requiring a verification of IDP addresses, many of these pensioners who do not have actual addresses/homes in GCAs are at risk of losing their state benefits, which are often their only means of subsistence. It is estimated that the amendment to Resolution 509 could reduce the number of IDPs by 20 to 30 percent.

It is impossible to say how many people are affected by problems with registration, or are not registering for a variety of reasons. The MoSP receives roughly 100 complaints per week, although not all are about registration and many are repeat complaints as procedures are so slow.

Not only has the government struggled to find an effective and efficient means of registering IDPs, it has also failed to make the information it has collected accessible to the public. As of yet, the government has not published information about the characteristics of the IDPs it has registered (age, gender, etc.), nor has it produced an overall profile of the displaced population.

4. Support training on the rights of IDPs

Of all 12 Benchmarks for Action, probably the least has been accomplished on the goal of training state and local authorities on the rights of IDPs. In Ukraine, there is neither an existing, nor a planned system for the training of public officials who are responsible for various issues related to internal displacement.

While officers of the MoSP, the Office of the Parliament Commissioner for Human Rights, and the Ministry of Internal Affairs occasionally take part in the work of the UN Cluster system in Ukraine and sometimes attend various public events (e.g. round-tables, conferences, etc.), it can hardly be said that they are participating in special training courses on IDP issues in any significant way. This lack of specialized training is apparent in almost all aspects of the government’s attempts to provide assistance and support to IDPs.

While many national and international NGOs and UN agencies have been organizing training programs for their own staff, activists, volunteers, and journalists who are

engaged in helping IDPs, these events are not coordinated by the government, and their implementation depends entirely on the capacity and will of the organizations to continue the trainings. Furthermore, government officials very rarely take part in trainings organized by NGOs.

5. Create a legal framework for upholding the rights of IDPs

According to article 75 of the Constitution of Ukraine,⁶⁸ the Parliament (Verkhovna Rada), is the only legislative body of the country with the authority to issue laws which are obligatory throughout the territory of Ukraine. According to article 116 of the Constitution, the Cabinet of Ministers of Ukraine ensures the implementation of the Constitution and laws of Ukraine and acts of the President of Ukraine and takes measures to ensure the rights and freedoms of citizens. The Constitution further provides (article 117) that the issues, resolutions and orders issued by the Cabinet of Ministers within its competence are mandatory. This means that laws of Ukraine (which can be adopted only by Parliament) are the acts of the highest legal power. Resolutions and orders of the Cabinet of Ministers as the highest executive body are policies intended to implement those laws and as such, are also obligatory.

Draft Law 4490a-1, *On ensuring rights and freedoms of IDPs*, was developed in summer 2014 with the extensive involvement of NGOs that provide legal, humanitarian, and psycho-social support to IDPs. The working group, which included human rights activists and lawyers, introduced a bill to parliamentarians on August 28, 2014. It was the fourth bill introduced to the Ukrainian Parliament (Verkhovna Rada) that concerned the protection of rights and freedoms of IDPs. The first three bills were either rejected by Parliament or vetoed by President Poroshenko.

This fourth bill took into account the suggestions and comments of central executive bodies, members of Parliament, and the President's administration. The version that was adopted on October 20, 2014, however, differed significantly from the original civil society's proposal.⁶⁹ For example: (1) foreigners and stateless persons were now excluded from the group of people who could be recognized as IDPs; (2) IDP certificates would now only be valid for six months, rather than an indefinite period as originally proposed; (3) all provisions regarding humanitarian aid were excluded; and (4) many provisions ensuring the property rights of IDPs and authorizing expenditures from the state budget were also omitted. It took the President a month to sign the law. It went into effect on November 22, 2014.

It is important to note that by the time the law was enacted, there were as many as 472,605 IDPs in Ukraine according to OCHA. Thus, it was not until more than eight and a half months had passed from the beginning of the internal displacement crisis in Ukraine, and the number of displaced reached almost half a million people, that Parliament finally adopted the first legal act that defines the specific rights and freedoms of internally displaced persons.

⁶⁸ Available only in Ukrainian at <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/paran4404#n4404>.

⁶⁹ Available only in Ukrainian at <http://zakon2.rada.gov.ua/laws/show/1706-18>.

The Cabinet of Ministers responded to the situation of internal migration more quickly than Parliament, although not quickly enough, given the gravity of the situation. On October 1, 2014 the government adopted two resolutions, Resolution 509: *On registration of internally displaced persons from the temporarily occupied territory of Ukraine and regions of the anti-terrorist operation*, and Resolution 505: *On providing monthly targeted financial support to those who are moving from the temporarily occupied territory of Ukraine and anti-terrorist operation conduct area to cover livelihood, including housing and utilities*.

These two resolutions were the executive branch's response to a social challenge that was growing more and more serious by the day. Indeed, by the time these acts were passed, there were already 379,000 officially registered IDPs throughout Ukraine. These people lived mostly in shelters provided by the state and lacked almost everything, including clothes, shoes, essential goods, identification documents that would have allowed them work, access to the healthcare system, psychosocial assistance, and social support.

Before the adoption of the aforementioned resolutions, NGOs and IDPs had organized a number of campaigns to draw the government's attention to the gravity of the issue.⁷⁰ It should be noted that Resolutions 505 and 509, which finally provided for the registration of IDPs and the provision of cash assistance, were approved despite the lack of an appropriate legislative framework to support them. In other words, the Cabinet of Ministers noticed that the IDPs lacked security in their new places of residence and were struggling to support themselves. They saw that there was no adequate legislation on the matter and that there was a lack of political will and consent in Parliament and the President's office. Accordingly, the Cabinet of Ministers acted to put some safeguards into place. They had been able to recognize the urgent need to address some of the problems confronted by the displaced, and therefore decided to start a tracking system at the state level that would allow the government to register displaced persons, and on the basis of that registration, to provide them with financial assistance to help them rebuild their lives in a new place. The Cabinet of Ministers undertook these efforts even though the process by which they did it contradicts some basic principles of law.

While the Cabinet of Ministers' adoption of Resolutions 505 and 509 was helpful to IDPs, the fact that it took so long for laws on the rights and freedoms of IDPs to be passed, gave rise to many legal gaps in the protection of IDPs and has led to significant discrepancies in the implementation of these programs.

Furthermore, because there has been a lack of institutional understanding and strategic thinking about the complexity of the displacement issue, many of the provisions in Resolution 505 and Resolution 509 contradict the Guiding Principles on Internal Displacement as well as basic tenets of international human rights law. In particular, these issues are problematic: (1) the legal definition of "internally displaced persons"

⁷⁰ "Volunteer movement puts pressure on government to confront refugee crisis," Kyiv Post, June 15, 2014, <http://www.kyivpost.com/content/ukraine/volunteer-movement-puts-pressure-on-government-to-confront-refugee-crisis-351938.html>.

excludes foreigners and stateless persons from the group of people who may be recognized by the state as IDPs, thereby preventing them from obtaining assistance and other services offered only to registered IDPs; (2) reliance on the *propiska* (or “internal passport”) as the only acceptable way to prove one has been displaced from their home; (3) the inability to obtain IDP-earmarked government assistance without having a national passport to prove one’s identity; (4) the absence of procedures for providing IDPs with basic assistance (housing, meals, healthcare, etc.) before their registration as IDPs has been formalized; and (5) the absence of a mechanism for providing IDPs the right to secure compensation for lost and/or damaged property.

As of the beginning of May 2015, however, there are several bills registered by Members of Parliament that aim to amend the laws on the rights and freedoms of IDPs to bring them in line with the Guiding Principles. None of them have yet been heard at the Parliament’s plenary session.

6. Develop a national policy on internal displacement

Despite the adoption of a law entitled “On ensuring rights and freedoms of internally displaced persons,”⁷¹ many concerns regarding their rights and welfare remain. Although many displaced persons are hopeful that they may be able to return to their homes soon, it is essential to recognize that for many IDPs, displacement is likely to be protracted. Article 2 of the law guarantees the right of a displaced person to return to their home area and reintegrate. It provides, no guarantees, however, for integration in other parts of Ukraine, as is required by international standards including the Guiding Principles.⁷²

The absence of a unified national policy on internal displacement often results in contradictory decisions at the highest levels. A remarkable example of this can be found in significant discrepancies between the Law on IDPs and Resolutions 505 and 509 created by the Cabinet of Ministers. For instance, the definition of IDP varies across the documents; the name of the IDP certificate used in the resolutions is different than the name used in the law; in the resolutions there is no obligation for an IDP to register his or her new place of residence, while it is a requirement under the law; and there is nothing in the law about the provision of monthly assistance for IDPs’ living costs and utility bills, while this is explicitly addressed in Resolution 505.

Furthermore, it wasn’t until the beginning of 2015 that individual ministries began drafting strategic documents on specific problems faced by IDPs. For example, the MoSP, with the participation of scholars, drafted the *Program on employment and professional training for IDPs in 2015 - 2016*.⁷³ The program is intended to provide

⁷¹ Available only in Ukrainian at <http://zakon2.rada.gov.ua/laws/show/1706-18>.

⁷² “Report on the human rights situation in Ukraine, 1 December 2014 to 15 February 2015,” Office of the United Nations High Commissioner for Human Rights, February 2015, <http://www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf>.

⁷³ Available only in Ukrainian at http://www.mlsp.gov.ua/labour/control/uk/publish/article%3Bjsessionid=B73BD79906263E0A3BDFC7B9FC0E78AF.app2?art_id=172089&cat_id=107177.

employment and enhance the competitiveness of IDPs in the labor market by providing them with professional training.

By order of the Cabinet of Ministers, the MoSP also drafted the *Comprehensive state program of integration, social adaptation and protection and reintegration of internally displaced persons for 2015-2016*.⁷⁴ This program envisions cooperation of public authorities at all levels. It also anticipates the involvement of local government, educational and cultural organizations, and NGOs in addressing some of the problems faced by internally displaced persons.

The program aims to implement changes in the following areas:

- Legal – provision of legal assistance, and raising awareness about the legal rights of IDPs;
- Social – NGOs will provide social support for IDPs, as well as help with the distribution of financial support;
- Medical – create systems to help maintain the health of IDPs;
- Transport – ensure adequate transportation services for evacuation and other needs of IDPs;
- Patriotic education – development of programs to enhance patriotic feelings, promoting social development, and improving the mental health of IDPs.

Both of these documents were drafted following extensive consultations with key stakeholders including NGOs, donors, Members of Parliament, IDPs, and local authorities. As of the beginning of May 2015, however, neither of these documents has been adopted either by Parliament as a law or by the Cabinet of Ministers as a Resolution.

7. Designate an institutional focal point on IDPs

Since the beginning of internal displacement in March 2014,⁷⁵ the Ukrainian government has tried several times to design a focal point with a mandate to provide assistance and protection for internally displaced persons and other populations affected by the conflict throughout the territory of Ukraine. To this end, the Cabinet of Ministers adopted Resolution 298-r, *Approving the plan for additional measures on the temporary accommodation of the Ukrainian citizens displaced from Autonomous Republic of Crimea and the city of Sevastopol to other regions of Ukraine*, effective as of April 1, 2014.⁷⁶

The resolution provided for the establishment of regional offices led by the heads of the regional state administrations and the Kiev city administration, which would address

⁷⁴ Available only in Ukrainian at

http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=169301&cat_id=169302

⁷⁵ “United Nations Human Rights Monitoring Mission Deployed to Crimea amid Crisis between Russia Federation, Ukraine, Security Council Told,” Security Council 7144th Meeting: SC/11328, March 19, 2014, <http://www.un.org/press/en/2014/sc11328.doc.htm>.

⁷⁶ “Legislative documents,” UNHCR Kyiv, accessed May 12, 2015, <http://unhcr.org.ua/en/resources/legislation-ukr#IDPs>.

issues of internal displacement. In June 2014, the regional headquarters transformed into the Interagency Coordination Staff, run by the former Deputy Prime Minister, who was the Head of the Ministry of Regional Development (and is now a Parliament Speaker). In the end of 2014, this function was handed over to the State Emergency Service, which was not effective.

The Cabinet of Ministers also adopted several other resolutions. In Resolution 297, *On the State Service of Ukraine on the Autonomous Republic of Crimea, Sevastopol and internally displaced persons* (effective July 17, 2014), the Cabinet of Ministers proposed the creation of a new agency dealing with issues arising out of the conflict. This resolution, however, was soon amended, limiting the power and scope of the proposed agency. Through Resolution 625, *The State Service of Ukraine on the Autonomous Republic of Crimea and Sevastopol* the agency was renamed (effective October 22, 2014). The Cabinet of Ministers also adopted Resolution 655, *Some issues of the State Agency for Donbass restoration* (effective November 26, 2014). As of May 1, 2015, however, none of these programs have been set up in practice.

The State Service, if created, would deal exclusively with economic and security issues associated with the annexation of the peninsula (e.g. the regulation of import/export of goods from/to Crimea, and the development of regulations for crossing the administrative border of the temporarily occupied territory). The agency would not, however, concern itself with human rights issues affecting IDPs. By changing the name of the agency, the Cabinet sent a clear message that the needs of IDPs were no longer a primary concern of the State Service.

The main disadvantages of the State Service include:

- The scope of the agency's responsibilities do not include the protection of internally displaced persons and other affected populations.
- The agency is subordinated to the Ministry of Regional Development - a single ministry with a specific mandate focused primarily on the development of local communities and government housing programs. The agency should be responsible for fulfilling the Cabinet of Minister's responsibilities under Article 10 of the Law, *On ensuring of rights and freedoms of internally displaced persons*,⁷⁷ to coordinate and supervise activities relating to the protection of IDPs. Accordingly, it would be more appropriate for the agency to be directly subordinated to the Cabinet of Ministers, instead of the Ministry of Regional Development.
- The State Service of Ukraine on the Autonomous Republic of Crimea, Sevastopol and internally displaced persons exists only virtually. It should be noted that only three months after the State Service's creation, the agency was renamed by the Cabinet of Ministers, removing "internally displaced persons" from the agency's name and scope of responsibilities.

Alas, more than 13 months after the beginning of internal displacement in Ukraine, the country is still lacking a governmental body with a primary responsibility to coordinate

⁷⁷ "Legislative documents," UNHCR Kyiv, accessed May 12, 2015, <http://unhcr.org.ua/en/resources/legislation-ukr#IDPs>.

national efforts on IDPs. The State Service mentioned above was largely a 'construction agency' responsible for renovating the destroyed infrastructure in Donbass but not for protection of the rights of IDPs. The main obstacles for establishing such a body are lack of political will, shortage of financial resources, the government's reluctance to publically recognize internal displacement as an acute problem for Ukraine, and the government's hesitance to appeal to the international community for professional advice.

8. Encourage national human rights institutions to integrate internal displacement into their work

In Ukraine, human rights institutions are represented by the Parliament Commissioner for Human Rights (Ombudsman) and the Presidential Commissioner of Ukraine for Children's Rights (Children's Ombudsman).

The Ombudsman's role in dealing with internal displacement in Ukraine without hesitation can be recognized as very active. Since the beginning of internal displacement, her office, including regional coordinators, has been fully involved in monitoring of the situation of internally displaced and other affected population and seeking solutions to emerging problems. In terms of internal displacement the Ombudsman's activities are mainly focused on the following directions:

- Participation in establishing and further monitoring of the national legal framework on internal displacement. Thus, in October 2014 Ombudsman publically supported adoption of the Law of Ukraine "On ensuring the rights and freedoms of internally displaced persons" elaborated mainly by the NGOs assisting IDPs and by the Right to Protection in particular. Further, its office hosted several events aimed at elaborating on the amendments to the Cabinet of Ministers of Ukraine's (CMU) Resolutions on registration of IDPs and allocation of social payments. In 2015, the Parliament Commissioner strongly condemned arbitrary adoption of the SBU's "Temporary order to regulate travel in and out of the conflict area" creating serious obstacles in the way of affected population remaining on the non-governmental controlled area to flee to the safe territories. In 2014 the parliament Commissioner participated in elaboration of the national human rights strategy⁷⁸
- Monitoring of the human rights violation on the occupied territory of the Crimean Peninsula. The Ombudsman's office also collects individual cases of those IDPs and conflict-affected persons whose rights have been violated, albeit does not respond to such cases efficiently enough. Given the lack of capacity of the Ukraine's national human rights institutions' to protect the rights of the Ukrainian population remaining in Crimea, the Parliament Commissioner suggests creation of international human rights missions for this purpose;

⁷⁸ "Report on the human rights situation in Ukraine, 1 December 2014 to 15 February 2015," Office of the United Nations High Commissioner for Human Rights, February 2015, <http://www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf>.

- Monitoring of the human rights violation on the conflict-affected non-governmental territories in Eastern Ukraine. In this direction the Ombudsman mainly works through her Regional Coordinators who often in cooperation with the UN, NGO's and INGOs' field offices conduct monitoring visits to the places of the IDPs' residence. Through the network of the National Preventive Mechanism's volunteers Ombudsman monitors situation of the IDPs in closed institutions, except for the non-governmental controlled area.

As well as the Ombudsman, Children's Ombudsman is actively involved in assessing the situation and tackling problems of children affected by the conflict and/or internal displacement. In particular, he closely cooperates with the national NGO specializing on protection of children's rights, conducts visits to the places of residence of the internally displaced children and requests for global support to the solution of problems of children suffering from the conflict and/or internal displacement.

Notwithstanding the apparent activity, meaningful outcomes of the Ukraine's national human rights institutions' efforts are missing. In spite of their active roles, the efforts of Ukraine's national human rights institutions have not yet had a significant impact on the lives of IDPs.

9. Ensure the participation of IDPs in decision-making

Since the beginning of the internal displacement crisis, Ukrainian governmental and non-governmental actors have concentrated their efforts on satisfying IDPs' most acute needs without attempting to involve IDPs themselves in the decision-making process, at least at the local level. Nonetheless, IDPs began to act on their own initiative to create civic organizations and volunteer movements, or simply coordinate collective centers for the internally displaced. Some of the organizations formed in the beginning of the conflict have become influential civil society members.

With time, the aforementioned proactive IDPs managed to establish contacts with local authorities, (including state regional administrations, city councils, and regional ministries), and began to set up non-official civic councils that worked closely with official authorities and in some cases influenced their decisions. Of course, the success of such an initiative is normally predetermined by the willingness of authorities to cooperate and by the initiators' persistence. Fortunately, in recent months authorities have been increasingly willing to cooperate with the civil society, including the IDP community.

Another way IDPs can participate in decision-making is through attendance at public hearings of the relevant Parliamentary committees (e.g. the Committee on Human Rights, the Committee on Social Policy, the Budget Committee, etc.). Such public hearings, however, take place very rarely and often only at the request of influential civil society members. Generally, IDPs are not invited to participate, although members of NGOs that represent the interests of IDPs may occasionally be allowed to take part. The interests of IDPs from eastern Ukraine and Crimea are supposed to be represented in Parliament by Members that come from those regions. However, because there are

so few of them, and they lack expertise on the issues, many advocacy efforts actually originate from other Members.⁷⁹

Although the Ukrainian government does not actively prevent IDPs from participating in decision-making, it has not established any specific program or strategy that would ensure that IDPs' opinions and ideas are being heard in any meaningful or consistent way.

10. Support durable solutions

National authorities should bear responsibility for ensuring IDPs' rights to the durable solutions set out in Guiding Principles 28-30. Until recently, however, only the non-governmental sector in Ukraine has been engaged in planning durable solutions for IDPs as reflected in the the 2015 Humanitarian Response Plan prepared by the Ukraine Humanitarian Country Team.⁸⁰

A lack of political will within the government has substantially hampered the elaboration and implementation of durable solutions for IDPs. It took almost a year for the government to draft its *Comprehensive State Program of integration, social adaptation, and protection and reintegration of internally displaced persons for 2015-2016*.⁸¹ The document still has to be assessed by NGOs with special expertise in social policy and law-making before it can be handed over to the Cabinet of Ministers for further implementation. According to the draft, the program is aimed at: finding solutions for IDPs' basic problems; reducing social tension between IDPs and host communities; providing IDPs with adequate living conditions, social, physical, medical, psychological, and material support; and supporting IDPs' return to their places of origin. A lack of a step-by-step plan for implementation of the program, however, threatens to be a significant weakness that could undermine the government's efforts.

Notwithstanding the continued efforts of NGOs to persuade the government to adopt a legal framework ensuring IDPs' rights, including those related to housing, land and property, it is unlikely that changes to the legal system are imminent. In 2014, the non-governmental sector urged the adoption of draft Law 2167, which seeks to ensure IDPs' property rights, and introduces a long-term program for compensation of destroyed housing. Up until publication of this paper, however, the draft has not received the government's support due to its reluctance to allocate additional funds for IDP issues, even those that have long-term implications.

Due to ongoing hostilities in eastern Ukraine, the full-scale return of IDPs to their places of origin is unlikely for the foreseeable future. Those who do attempt to return are usually supported by the non-governmental sector. For IDPs whose property was destroyed or

⁷⁹ Out of 422 Members in the Ukrainian Parliament, only 29 (approximately 7 percent) represent Crimea and Donbass (Luhansk and Donetsk regions).

⁸⁰ "2015 Humanitarian Response Plan (Revised) Ukraine," Ukraine Humanitarian Country Team, February 2015, http://www.humanitarianresponse.info/en/system/files/documents/files/UKRAINE_HRP_2015%20FINAL%20%281%29.pdf.

⁸¹ Available in Ukrainian at: http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=169301&cat_id=169302.

who are otherwise reluctant to return to their home regions, local integration into the area where they have been accommodated can be a viable and productive solution. Unfortunately, neither the MoSP nor local NGOs, have the requisite expertise in the establishment of mechanisms for wide-scale integration. Hence, even though the MoSP has started taking measures to plan prospective integration activities,⁸² it would be highly beneficial for the MoSP to prioritize consultation with international organizations proficient in managing integration programs. Fortunately, HIAS, an international NGO operating in Ukraine, is currently considering the development of a consultation program that could help the Ukrainian government plan for integration.

11. Allocate adequate resources to the problem

Significantly weakened by the ongoing conflict, the Ukrainian government lacks sufficient capacity to adequately address IDPs' needs. In order to provide IDPs with monthly financial assistance, the government allocated a total of USD 159 million in the state budget for 2015. The allocated funds, however, are not sufficient for the implementation of durable solutions for IDPs. Because the amount allocated by the national government is not enough, local authorities bear responsibility for solving IDPs' problems at the local level. This creates an intense financial pressure on local resources, which inevitably affects the effectiveness and breadth of services and support available to IDPs .

In February 2015, the Cabinet of Ministers proposed amendments to the state budget that would allocate additional funds for addressing IDP-related issues.⁸³ If adopted, however, the amendments will not come into force until the third quarter of 2015, which may be too late to address some very serious issues such as preparation of accommodation for the upcoming winter season.

For quite some time, the Ukrainian government has been reluctant to recognize the scale of the IDP problem. In 2015, however, President Poroshenko asked international donors to provide Ukraine with financial assistance to tackle such problems. While this request indicates a governmental interest in addressing IDP issues, the government has not brought the Ukrainian legal framework on IDPs into line with international standards, which may affect international donors' willingness or ability to provide financial assistance.

As of May 1, 2015, the bulk of IDP assistance has come not from the Ukrainian government, but from international NGOs such as the Norwegian and Danish Refugee Councils, People in Need, Save the Children, UN agencies, and national NGOs such as CF Eastern Heart, and the Akhmetov Foundation.

⁸² The Comprehensive National Program for integration, social adaptation, protection and integration of internally displaced persons in 2015-2016 was drafted by the Ministry of Social Policy of Ukraine in May 2015.

⁸³ "Government proposes amendments to the State Budget for supporting IDPs," Information and Communication Department of the Secretariat of the CMU, February 2, 2015, http://www.kmu.gov.ua/control/publish/article?art_id=247944521.

12. Cooperate with the international community when national capacity is insufficient

As of May 1, 2015, the level of the Ukrainian government's willingness to cooperate with the international community on IDP issues can be described as poor. In many cases, the success of national authorities' partnerships with international organizations depends too heavily on personal relationships rather than a systematic approach that could lead to positive working relationships on a consistent basis. Regrettably, national authorities tend to be mostly interested in the possibility of receiving financial and material assistance from international actors, and do not pay enough attention to the valuable expertise these organizations can offer in terms of developing national strategies and durable solutions for tackling internal displacement and ensuring IDPs' rights. Additionally, because the Ukrainian government has not yet created a reliable and comprehensive IDP registration/tracking system, it has been unable to provide international organizations with adequate data on IDPs and their needs, which ultimately means that these organizations have had to expend a lot of time and energy on gathering relevant data for themselves. .

More than a year after the beginning of the conflict in Ukraine, the international community is still facing difficulties in providing financial assistance directly to individual IDPs and IDP communities. In large part, this is due to the Cabinet of Ministers' Resolution 535, which requires that financial assistance from abroad be sent to government accounts for processing and then eventual distribution to IDPs.⁸⁴ International organizations, however, insist on the ability to operate within their own financial mechanisms in order to monitor the movement and utilization of allocated funds. Organizations that conduct operations in eastern Ukraine continuously face difficulties relating to the high level of bureaucracy and legal gaps concerning the provision of humanitarian assistance in the area (e.g. an obligation to pay high taxes on the provision of humanitarian assistance, and unnecessary obstacles delaying the delivery of food and non-food items to non-government controlled areas).

⁸⁴ "Internally Displaced Persons," UNHCR Kyiv, accessed May 6, 2015, <http://unhcr.org.ua/en/who-we-help/internally-displaced-people>.

CONCLUDING THOUGHTS

This analysis has sought to apply the 12 benchmarks in the *Framework on National Responsibility* to the Ukrainian government's approach to all phases of internal displacement, from preventing people from being displaced in the first place to working on durable solutions. The study found that the government's response has fallen short of these benchmarks across the board, with the possible exception of the engagement of national human rights institutions. For example, registration systems have been flawed, training programs either non-existent or inadequate, and the government has been slow to set up mechanisms and policies for ensuring that the rights of those displaced are upheld. Some of these observations were also made by Chaloka Beyani, UN Special Rapporteur on the Human Rights of IDPs, when he visited the country in September 2014.⁸⁵

However, it is important to recognize that no government in the world has fully exercised its responsibilities toward IDPs, particularly not in the first year in which large-scale displacement has occurred. Some governments that are considered to have relatively strong policies toward IDPs – such as Colombia, Uganda, Georgia, and Kenya – developed these approaches only after a number of years during which time the needs of large numbers of people were either ignored or inadequately addressed. In the study by the Brookings's Project applying the framework to 15 governments, the authors concluded that the single most important factor was political will.

"We want to emphasize the overriding importance of political will in determining whether a government fulfills its responsibility to IDPs. Governments cannot always control the factors that cause displacement, but they can take measures to improve the lives and uphold the rights of IDPs. If national authorities are convinced of the importance of addressing internal displacement, they can take actions to respond to the needs of those who are displaced and to support durable solutions to displacement."⁸⁶

Perhaps not surprisingly, the authors of the Brookings Institution's study further found that political will – the willingness of political authorities to engage with internal displacement – was rarely motivated primarily by altruistic factors but rather by political and security concerns. When governments perceived that protecting and assisting IDPs contributed to their national interests – security, stability, economic well-being, etc. – they were more likely to adopt such policies. At least some governments have resisted developing policies towards IDPs because of a desire to deny their own role in causing the displacement. Others have resisted acknowledging the scale of displacement because it implies a lack of governmental control over their territory or is simply not the image of their country they wish to project to the world.

⁸⁵ "Ukraine: UN expert calls for swift response to growing internal displacement plight as winter closes in," United Nations Office of the High Commissioner for Human Rights, September 25, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15096&LangID=E>.

⁸⁶ Elizabeth Ferris, Erin Mooney and Chareen Stark, "From Responsibility to Response: Assessing National Approaches to Internal Displacement," Brookings-LSE Project on Internal Displacement, November 2011, <http://www.brookings.edu/~media/research/files/reports/2011/11/responsibility-response-ferris/from-responsibility-to-response-nov-2011.pdf>, 301.

However, addressing internal displacement through the 12 benchmarks in this Framework is not only the right thing to do in the sense of protecting the rights of the displaced, but it also makes good political sense. Long-term, protracted displacement holds back the economic development of a country. The existence of large numbers of people who are unsettled or ‘in limbo’ and who consequently sometimes feel a sense of grievance can be an unsettling if not destabilizing force in society.

While all 12 of these benchmarks are important in developing an appropriate response to IDPs, we suggest that the following three be prioritized by the government of Ukraine and by the country’s supporters:

Firstly, name an appropriate focal point within the government for IDP issues and give it the necessary authority to play a leadership role on a range of issues. Having a champion within the government can facilitate the development of legislation, the mobilization of resources, and the raising of awareness. Ideally, this focal point would work with civil society organizations and with the Ukrainian national human rights institutions that are already functioning fairly well.

Secondly, invest in training of government officials, including on basic international standards on IDPs, on components of good policy-making, and on direct service provision. Unfortunately there are 50 countries in the world with significant numbers of people displaced by conflict and thus a wealth of experience in approaches and programs that work and those that do not.

Thirdly, put the focus of IDP policies and programs on finding durable solutions and finding them now. The present situation in Ukraine, with 1.5 million IDPs and a simmering conflict, has all the ingredients for protracted displacement that could last years or even decades. The governments of virtually all the 40 or so countries with protracted IDP situations lament, at least privately, that they didn’t get around to thinking about solutions until several years into the crisis, at the earliest. By this time, everything becomes more complicated, expensive, and difficult. Set up a task force to consider alternative durable solutions, commission some research into the feasibility of different scenarios, and encourage international and local civil society organizations to leave no stone unturned now – to set the stage for finding durable solutions for those displaced in Ukraine by forces beyond their control.

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