

# HOUSING, LAND AND PROPERTY RIGHTS OF INTERNALLY DISPLACED PERSONS IN AZERBAIJAN

Comparative Analysis of the Domestic Legislation and its  
Compatibility with International Legal Framework



LAW SOCIETY  
OF AZERBAIJAN

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**Baku, 2023**

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LAW SOCIETY  
OF AZERBAIJAN



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## Table of Contents

Introduction.....	5
<b>I. BACKGROUND AND CONTEXT .....</b>	<b>6</b>
1.1. Brief History of the Armenian-Azerbaijani, Nagorno-Karabakh conflict.....	6
1.2. Background of the Nagorno-Karabakh conflict.....	7
1.3. First Nagorno-Karabakh War.....	8
1.4. The Peace Process after the First Nagorno-Karabakh War .....	10
1.5. Second Nagorno-Karabakh War .....	13
<b>II. LEGAL FRAMEWORK FOR HOUSING, LAND AND PROPERTY RIGHTS OF IDPs .....</b>	<b>15</b>
2.1. International Legal Framework.....	15
2.2. Domestic legislation concerning HLP rights of IDPs.....	24
2.3. Actions taken after the Second Karabakh War concerning IDPs .....	31
<b>III. HLP CHALLENGES FOR IDPs: AZERBAIJANI CASE.....</b>	<b>35</b>
3.1. Right to Return .....	36
a. International framework .....	36
3.2. Domestic frameworks.....	37
a. Right To Return: Legal and Policy Frameworks .....	37
b. National policy.....	39
3.3. Housing, Land and Property rights of IDPs .....	42
a. Right to housing.....	42
b. Right to Land.....	44
c. Right to property .....	45
d. The rights of tenants and other non-owners.....	47
e. Compensation or Restitution Frameworks/Procedure.....	49
<b>Conclusion .....</b>	<b>52</b>
<b>Recommendations:.....</b>	<b>53</b>

## Introduction

The report focuses on the housing, land, and property (HLP) rights of Internally Displaced Persons (IDPs) in Azerbaijan. Its aim is to provide a comprehensive understanding of the background, legal framework, and challenges faced by IDPs concerning their HLP rights. By examining the historical context, international and domestic legal frameworks, and specific challenges, this report seeks to illuminate the issues surrounding the housing, land, and property rights of IDPs.

The Armenian-Azerbaijani Nagorno-Karabakh conflict serves as the backdrop for understanding internal displacement in Azerbaijan. The report provides a brief history of the conflict, highlighting its impact on the displacement of individuals within the country. It explores the peace process following the first Nagorno-Karabakh war and the temporary resolution and consequences of the second Nagorno-Karabakh war. Understanding these historical events is crucial for comprehending the context in which the HLP rights of IDPs have been affected."

The report then delves into the legal framework for HLP rights, both at the international and domestic levels. It examines relevant international legal instruments that provide guidance and protection for IDPs' rights. Additionally, it explores the domestic legislation and regulations in Azerbaijan, including the Constitution, national laws related to HLP rights, regulations on evictions, gender equality legislation, and children's rights. Analyzing the legal framework is essential to understand the rights and protections available to IDPs in relation to their housing, land, and property.

The report further addresses the specific challenges faced by IDPs concerning their HLP rights. It examines the right to return and the procedures, institutions, and mechanisms available for voluntary return. Additionally, it explores various aspects of housing, land, and property rights, including issues such as housing availability, land ownership, property rights of tenants and non-owners, and the frameworks and procedures for compensation or restitution. By highlighting these challenges, the report aims to identify areas that require attention and intervention to protect and uphold the HLP rights of IDPs effectively.

In conclusion, this report aims to provide a comprehensive analysis of the HLP rights of IDPs in Azerbaijan. By examining the historical context, legal framework, and specific challenges, it seeks to contribute to a better understanding of the issues surrounding the IDPs' housing, land, and property rights. Ultimately, the report aims to inform stakeholders and policymakers about the importance of addressing these challenges and implementing measures to ensure the protection and fulfillment of the rights of IDPs in relation to their housing, land, and property.



## I. BACKGROUND AND CONTEXT

### 1.1. Brief History of the Armenian-Azerbaijani, Nagorno-Karabakh conflict

For a long time of their coexistence, Armenians and Azerbaijanis used to live in peace. Only starting from the late XIX century, the historical and political literature presents facts about the large-scale clashes between Armenians and Azerbaijan. Up to that period, Armenians and Azerbaijanis have a rich history of peaceful coexistence than in war.

From 1988 and onwards, the conflict caught the international community, global media, and the researcher community's attention. In 1992, the so-called 'Minsk Group' was established to assist the conflict parties in finding their ways to peace<sup>1</sup>. The ceasefire agreements signed in 1994 created an opportunity for the more significant presence international mediation in the conflict, and parties started their long journey for conflict resolution<sup>2</sup>.

During the first phase of the conflict in the region, 20-30 thousand (figures differ based on the source) people were killed, more 750 thousand people were forced to flee their homes<sup>3 4</sup>

After the failed milestone of the Kazan meeting in June 2011<sup>5</sup>, the conflicting parties enhanced their war rhetoric, resulting in the clashes in August 2014, the first large-scale since the ceasefire agreement in 1994. The other highest point for the conflict was April 2016, when Azerbaijan first time after the ceasefire agreements, could retake a small part of the territories in the surrounding regions of Nagorno-Karabakh<sup>6</sup>.

The recent 44-day war in Nagorno-Karabakh, between Armenia and Azerbaijan, demonstrated that one of the conflicting sides could control the territory with military supremacy but not solve the conflict itself. Right after the disbandment of the Soviet Union, the political turmoil within Azerbaijan and the military superiority of Armenia allowed it to gain control over Nagorno-Karabakh and surrounding districts; hence Armenia have had control over the wider Karabakh region between 1994-2020. The

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<sup>1</sup> Organisation for Security and Cooperation in Europe (OSCE). (1992, March 24). OSCE web-page. Retrieved from Helsinki Additional Meeting of the CSCE Council-Summary of Conclusions: <https://www.osce.org/files/f/documents/3/9/29121.pdf>

<sup>2</sup> Hakala, T. (1998). The OSCE Minsk Process: A balance after five years. Helsinki Monitor, 9, 5.

<sup>3</sup> Ibid

<sup>4</sup> GÜRSOY, H.E., 2018. THE HUMANITARIAN CONSEQUENCES OF THE KARABAKH, ABKHAZIA AND SOUTH OSSETIA CONFLICTS: THE CASE OF AZERBAIJANI AND GEORGIAN IDPS. The Centennial of the Independence of the Three South Caucasus States: Historical Background, Contemporary Developments and Prospects of Peace and Prosperity.

<sup>5</sup> Sammut, D., 2011. After Kazan, a Defining Moment for the OSCE Minsk Process. Istituto Affari Internazionali (IAI).

<sup>6</sup> Schumacher, T., 2016. Armenia, Azerbaijan and the Nagorno-Karabakh conflict: why the 'black garden' will not blossom any time soon. Security Policy Brief No. 71, April 2016.

recent war, proving the military supremacy of Azerbaijan, created a new political and geographical reality: Azerbaijan's control over the wider Karabakh region

## 1.2. Background of the Nagorno-Karabakh conflict

The first protest gathering regarding the Nagorno-Karabakh conflict took place in Yerevan in 1987. Student rally would call for 'Miatsum': the unity of Karabakh and Armenia. Initially devoted to environmental issues, the event would start the demand for NKAO transfer to the Armenian SSR. The Armenian press began accusing Azerbaijan SSR of the Nagorno-Karabakh region's economic underdevelopment and depriving Armenian people of high living standards. In a short period, the Armenians in Nagorno-Karabakh would start organising their rallies<sup>7</sup>.

In February 1988, Nagorno-Karabakh Armenians appealed to the USSR leadership to revise its status and transfer it to the Armenian SSR. As a response, the Communist Party Central Committee called the decision an action provoked by "nationalist elements." The statement of the 'Politburo' noted that this "contradicts the interests of the working people of the Azerbaijan and Armenian SSR." The resolution was limited to general calls for a normalisation of the situation<sup>8</sup>.

The secessionists demand from the Nagorno-Karabakh Armenians would trigger a response from the Nagorno-Karabakh Azerbaijanis also, mainly living in Shusha and Aghdam. As a result, the first blood was shed on the 22<sup>nd</sup> of February, during the clash near the regional centre of Askeran. Azerbaijanis attended the rally from the city of Agdam, heading to "restore order"; Armenians with firearms met them on their way. As a result of the clash, two Azerbaijani youth – named Ali and Bakhtiyar – were killed<sup>9</sup>.

Following the Politburo and CPSU Central Committee decided to keep NKAO within Azerbaijan SSR, the first rallies were held in Baku and other cities of Azerbaijan in support of the decision. Very similar events took place in Gugark in Armenian SSR, causing the death of Azerbaijanis in Armenia and started the exodus of Azerbaijanis from Armenian SSR. Due to numerous clashes, Azerbaijanis flee from the Armenian SSR intensified in the following months<sup>10</sup>.

In January-November 1989, following the long debates between Azerbaijan and Armenian SSR leaders, Moscow introduced direct rule in Nagorno-Karabakh.

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<sup>7</sup> Cornell, S.E., 1999. The Nagorno-Karabakh Conflict. Uppsala Universitet.

<sup>8</sup> ibid

<sup>9</sup> Jafarli, R. (2005, February 22). Azerbaijan National Library. Retrieved from Qarabağ savaşı belə başladı: <http://www.anl.az/down/meqale/azerbaycan/2015/fevral/422514.htm>

<sup>10</sup> Makili-Aliyev, K., 2007. Enforcement of International Law in the Nagorno-Karabakh Conflict.



In June 1989, mass demonstrations began in Baku. As a result of the development, the local Communist party members in Yerevan and Baku lost their public credibility, and Popular Front in Azerbaijan, the 'Karabakh' Committee in Armenia, was gaining political capital during the events<sup>11</sup>.

As a result, Soviet troops entered Baku in January 1990 to gain control of the city, which led to numerous casualties among the local population. More than 130 people are considered dead in Baku; 800 were injured. These events went down in the history of Azerbaijan as "Black January". Baku events also were followed the expulsion of the Armenians remaining in Baku.

Another military operation to take back the control by the Soviet troops was named "Operation Ring". The military operation began at the end of April 1991 and was ordered by the decree of the President of the USSR. It was carried out in the NKAO and adjacent regions of Azerbaijan by the forces of the Ministry of Internal Affairs of the Republic of Azerbaijan, the Ministry of Internal Affairs of the USSR, and the Soviet Army. The proclaimed goal is to disarm the "Armenian illegal armed groups" and check the passport regime in Karabakh. The operation led to armed clashes and civilian casualties.

### 1.3. First Nagorno-Karabakh War

The newly emerged post-Soviet republics faced a lot of economic and political problems. Nevertheless, the Nagorno-Karabakh issue did not leave the agenda. Leaders of Russia and Kazakhstan intervened in the process, and the Zheleznovodsk communiqué resulted in relative peace. The peace ended on when a helicopter carrying Azerbaijani senior level official was hit down over Karabakh.

After the collapse of the USSR and the withdrawal of Soviet troops from Karabakh, full-scale military operations began. On the 26th of February 1992, Armenian combat units attacked the Azeri-populated city of Khojaly in Nagorno-Karabakh and committed a massacre. 680+ people died, more than 1000 taken hostage. It was the single most significant civilian life lost during the conflict. In May 1992, Armenian combat units took control over the culturally and strategically critical Shusha and the Lachin corridor, which connected Nagorno-Karabakh with Armenia.

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<sup>11</sup> Doğru, A., 2015. Nationalism and Democratization Process in Armenia: Impacts of the Nagorno-Karabakh Issue. *Gazi Akademik Bakış*, (16), pp.207-236.

In the context of these developments, in 1993, the UN adopted four resolutions recognising the territorial integrity of Azerbaijan and demanding an end to hostilities:

- On the 30th of April 1993, the UN Security Council adopted Resolution 822, calling for the immediate withdrawal of all occupying forces from the Kalbajar region and other occupied territories of Azerbaijan.
- On the 29th of July 1993, the UN Security Council adopted Resolution 853, which called for the full, immediate and unconditional withdrawal of the occupying forces from the Aghdam region and other occupied territories of Azerbaijan.
- On the 14th of October 1993, the UN Security Council adopted Resolution 874, which called for immediate reciprocal and necessary steps, including withdrawal from the most recently occupied territories, in accordance with the CSCE Minsk Group's timetable for settlement.
- On the 11th of November 1993, the UN Security Council adopted Resolution 884. The resolution condemned the occupation of Zangilan district and Horadiz settlement, the attack on the civilian population and the bombing of the territories of the Republic of Azerbaijan, demanded the unilateral withdrawal of the occupying forces from Zangilan district and Horadiz settlement and the departure of the occupying troops from other recently occupied territories. But all this, unfortunately, was not observed.

International mediation efforts would not end with the four UN SC resolutions: the so-called 'Minsk Group' was created to resolve the conflict, which included representatives of 11 countries. The group's history begins with the meeting of the CSCE Council of Foreign Ministers on the 24th of March 1992 in Helsinki. Thus, the situation in Nagorno-Karabakh was discussed at that meeting, and a decision was made to convene a Minsk Conference of the CSCE on the peaceful settlement of the Armenian-Azerbaijani conflict.

In 1994, following the brief success of the Azerbaijani army at the front-line, the conflicting parties could agree on a ceasefire in Bishkek. During the armed conflict of 1988-94, 30 thousand people died in the region, more than a million people became refugees and internally displaced persons.

With the military phase ending, the conflicting parties started diplomatic efforts to achieve sustainable resolution of the conflict.

#### 1.4. The Peace Process after the First Nagorno-Karabakh War

The peace negotiations and efforts of the international community started before the end of the active military phase of the conflict. Before the 1994 Bishkek protocol, the conflicting parties have already been part of several initiatives:

- *Zheleznovodsk communique.*
- *Iran initiated mediation mission.*
- *UN SC resolutions on the diplomatic resolution of the conflict.*
- *CSCE (later OSCE) have already established the so-called 'Minsk Group'.*

Indeed, the problem attracted the post-Soviet country leaders' attention initially and they acted first for the peace. The international mediation effort started with the Zheleznovodsk communiqué calling parties for peaceful coexistence. Leaders of Russia and Kazakhstan intervened in the process, and the Zheleznovodsk communiqué resulted in relative peace. The peace ended on the 20th of November 1991, when Azerbaijani, a Mi-8 helicopter, was hit down over the Martuni region of the NKAO. There were 22 people on board, most of them senior decision-makers of Azerbaijan, journalists, and members of the Russian-Kazakh peacekeeping mission<sup>12</sup>.

Iran made another unsuccessful attempt in the region. On the 8th of May 1992, Iran managed to invite the leaders of Azerbaijan and Armenia to Tehran. The representatives of Armenia and Azerbaijan signed a ceasefire agreement in Tehran. However, during the ceremony, Armenian military leaders successfully attempted to take control over Shusha, the highly strategic and culturally significant city for Azerbaijanis, on the 9th of May 1992. Hence, Iran's efforts were also halted and failed<sup>13</sup>.

The most successful and continues diplomatic efforts were under the auspices of the OSCE Minsk Group established in 1992.

The group's history begins with the CSCE Council of Foreign Ministers meeting on the 24th of March 1992 in Helsinki. Thus, the situation in Nagorno-Karabakh was discussed at that meeting, and a decision was made to convene a Minsk Conference of the CSCE on the peaceful settlement of the Armenian-Azerbaijani conflict. The co-chairmanship institution was established at the CSCE Summit in Budapest on December 5-6, 1994<sup>14</sup>. It was decided to appoint two co-chairs to the Minsk Conference and hold the Minsk Group meetings under their joint co-chairmanship. When the co-chairing of the Minsk Process was established, it was headed first by Finland and Russia and then by Sweden

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<sup>12</sup> Маркедонов, С.М., 2019. Россия в процессе Нагорно-Карабахского урегулирования. In 30-летие конфликта в Нагорном Карабахе (pp. 11-26).

<sup>13</sup> Mahmudlu, C. and Abilov, S., 2018. The peace-making process in the Nagorno-Karabakh conflict: why did Iran fail in its mediation effort?. *Journal of Contemporary Central and Eastern Europe*, 26(1), pp.33-49.

<sup>14</sup> Organisation for Security and Cooperation in Europe (OSCE). (1992, March 24). OSCE web-page. Retrieved from Helsinki Additional Meeting of the CSCE Council-Summary of Conclusions: <https://www.osce.org/files/f/documents/3/9/29121.pdf>

and Russia in 1995-1996. The United States, Russia and France have been co-chairing the OSCE Minsk Process since the 1st of January 1997. The group's main task was to directly assist in the peaceful settlement of the Armenian-Azerbaijani conflict.

The OSCE MG achieved mutual understanding between the conflicting parties on the three principles of the Helsinki Final Act:

- (i) *Refraining from the threat or use of force*
- (ii) *Territorial integrity of States*
- (iii) *Equal rights and self-determination of peoples.*

All the subsequent negotiations processes were based on these three principles. As it is seen, the “Equal rights and self-determination of peoples” principles demands acting at all times in conformity with... the relevant norms of international law, including those relating to the territorial integrity of States.”

Based on these core principles, in 1996, during the OSCE Lisbon Summit, the event participants decided to create Lisbon principles for the Nagorno-Karabakh conflict. During the Lisbon summit, the co-chairmanship of the OSCE Minsk Group also was created. Since then, Russia, the USA, and France were co-chairing countries of the OSCE Minsk Group, and since 1997, they proposed three leading solutions, which were discussed during all years of peacebuilding efforts. These solutions are<sup>15</sup>:

- *‘Package Deal’*
- *‘Step by Step’ Deal*
- *‘Common state’ Deal*

Some elements would exist in all Deals in one form or another:

One of the first such elements would be the international peacekeeping forces presence in the region to ensure the local population's safety.

- *Another element would be a ‘demilitarised zone where Azerbaijani militarised institutions would have no access. This separation zone would be permanently demilitarised and controlled, and monitored by the international peacekeeping mission.*
- *The land link – Lachin corridor – connecting Nagorno-Karabakh Armenians to Armenia was part of all deals. The ‘Step-by-step’ solution would connect the resolution of Nagorno-Karabakh's final status and the fate of the Lachin.*
- *Return of the IDPs and refugees to their initial place of residence. This would be mainly the return of Azerbaijanis to Shusha city and Armenians to Shaumian district – the*

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<sup>15</sup> Grigoryan, E., Smbatyan, H., Jumayeva, L. and Hasanova, N., 2019. Reflections on Scenarios on the Peaceful Resolution of the Nagorno-Karabakh Conflict in Armenia and Azerbaijan. Reflections.

*northern part of former Nagorno-Karabakh Autonomous Oblast controlled by Azerbaijan after 1994.*

The corridor and return of IDPs would be part of the future negotiations as part of the OSCE MG initiative or left to the future if the conflicting parties choose the 'Step by Step' Deal. It was envisioned that, in the future, as a result of the democratisation of the post-soviet Armenia and Azerbaijan, also increased efforts of international peace-making organisations on Confidence Building measures would make it easier for the nations to find a solution for these problems.

Alongside having similar elements, these deals would be different from each other in several ways. Here are the specific moments for each proposed solution:

#### 'Package' Deal

In 1996, Flavio Cotti, the Swiss Foreign Minister and OSCE Chairman-in-Office at the time, on behalf of the mediators, presented the draft framework for a 'Package Deal' to the Nagorno-Karabakh conflict. According to this proposal, Nagorno-Karabakh would be part of Azerbaijan, while Nagorno-Karabakh would have "the broadest possible self-rule." This would have necessitated removing all foreign forces from Azerbaijan's seized regions outside of Nagorno-Karabakh, unrestricted access between Nagorno-Karabakh and Armenia, and the right of refugees, internally displaced persons to return home. Armenia was against this idea because it settled the critical status issue in a way that Azerbaijan favoured.

#### 'Step-by-step' Deal

The new Minsk Group co-chairs publicly supported the 'Step-by-Step' approach at the Lisbon Summit in 1997. For Armenia, the primary flaw in this strategy was that it placed the most challenging aspect of Nagorno-Karabakh's sovereignty in jeopardy. The package solution would create an environment where Nagorno-Karabakh's final status would be discussed after eliminating the armed conflict's repercussions. On the other hand, the step-by-step strategy puts off a decision on Nagorno-Karabakh's final status indefinitely, focusing instead on a peace agreement that addresses all other issues.

These include provisions for (i) reliable international security guarantees for Nagorno-Karabakh, including the interim status, (ii) the withdrawal of Armenian forces from the surrounding districts, (iii) the return of IDPs to their initial place of habitation, and the (iv) normalisation of the relations between Armenia and Azerbaijan, including the reopening of trade and communication links.

## ‘Common State’ Deal

The 1998 Common State proposal is another way for the Minsk Group to return to the ‘Package’ deal with a slight modification of the previous proposal. The proposal was presented to the conflicting sides by the then Foreign Affairs Minister of Russia, Evgeny Primakov. The main difference between the 1997 ‘Package’ deal and the 1998 ‘Common state’ solution is an even waver formulation of Nagorno-Karabakh being part of Azerbaijan: “Nagorno-Karabakh is a status and territorial entity in the form of a Republic, which constitutes a common state with Azerbaijan within its internationally recognised borders.” This time, it was the Azerbaijani side that did not agree first.

The abovementioned proposals were one of the main points for the internal politics within Azerbaijan and Armenia. The preference on one of the proposals would cost the politicians their political carrier.

The public discussions around the preference for “Step-by-Step” and a “Package” Deal for the peaceful resolution of the Nagorno-Karabakh conflict become a contentious issue, especially in Armenian political life.

In 1998-2016, the conflicting party’s negotiation process would be around the mainly abovementioned principles. In 2008, the so-called Madrid Principles introduced a paraphrased version of the Lisbon Summit Document. According to the international observers, the conflicting parties were very close to signing the peace agreement in Kazan in June 2011. Still, the last-minute changes to the document halted the signing of the document<sup>16</sup>

### 1.5. Second Nagorno-Karabakh War

The outbreak of the Four-day war in April 2016, and Azerbaijan regaining control over a tiny portion of the territories left for Armenians in early 1994, began to play a severe role in further developments in Armenian society. As a result, the growing frustration caused by the April 2016 war and social-economic conditions led to the ‘Velvet revolution’ in Armenia.

Nikol Pashinyan’s coming to power in Armenia in 2018 gave impetus to the change of the format of the peace process in many ways. As a result, Pashinyan, considered by many as a populist politician, started making even more radical messages on the Nagorno-Karabakh conflict, proving he did not betray the Nagorno-Karabakh Armenians.

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<sup>16</sup> Babayev, A., 2020. Nagorno-Karabakh: The Genesis and Dynamics of the Conflict. In *The Nagorno-Karabakh deadlock* (pp. 17-38). Springer VS, Wiesbaden.



On the 5th of August 2019, while visiting Nagorno-Karabakh, for the opening ceremony of 'Pan-Armenian games', Armenian PM Nikol Pashinyan shouted to the crowd: "Karabakh is Armenia. That is it". His statements caused outrage in Baku.

According to the Azerbaijani Ministry of Defence, on the 27th of September 2020, Azerbaijani Armed Forces started the large-scale offensive as a countermeasure for the Armenian shelling of civilian areas close to the line of contact. Nevertheless, chain of events in Armenian and Azerbaijani political landscape also lead to the incident on the 27th of September 2020, and consequentially the 2020 Karabakh War.

As the result of the 44-day war, in the first phase, Azerbaijan could achieve military control over all southern parts of the Armenian controlled area, Shusha and Hadrut cities of the former NKAO, including the international border with Iran. On the 10<sup>th</sup> of November 2020, President Aliyev made a public call to the nation and announced the signing of the Tripartite statement between Armenia, Azerbaijan, and Russia. This statement enabled Azerbaijan to gain control over the rest of the surrounding territories of the former NKAO – Armenian troops withdraw from Kalbajar, Lachin and Aghdam rayons of Azerbaijan previously controlled by Armenians. Also, the Tripartite statement allowed Russian troops to enter the central parts of the former NKAO and do peacebuilding jobs. Their mandate is not clearly defined, leaving a room for their replacement with more international peacekeeping forces presence in Karabakh.

## II. LEGAL FRAMEWORK FOR HOUSING, LAND AND PROPERTY RIGHTS OF IDPs

### 2.1. International Legal Framework

#### *UN Guiding Principles of 1998*

Throughout the XX century various international instruments were developed for the protection of the rights of different categories of vulnerable people. This started with the refugees with 1951 Convention and its 1967 Protocol,<sup>17</sup> and continued with international convention on the rights of children,<sup>18</sup> prohibition of racial discrimination,<sup>19</sup> discrimination against women,<sup>20</sup> people with disabilities,<sup>21</sup> migrant workers<sup>22</sup>. However, one of the groups that was left behind for a long time despite being one of the most exposed to the dangers was Internally Displaced Persons (“IDPs”). The explanation for this may be attributed to the fact that when IDPs migrate inside the territory of the country of which they are citizens, such governments give protection to citizens who move for non-political reasons. However, this should not be interpreted as implying that there was no need for an international instrument to help increase domestic standards and assist IDPs in the respect, protection, and fulfillment of their human rights.. s.

Consequently, after long-lasting discussions, in 1998 UN Commission on Human Rights adopted Guiding Principles on Internal Displacement (“Guiding Principles”).<sup>23</sup> Unlike other international documents it was just principles and hence not a binding, but a soft law instrument. However, it paved the way to raise international awareness and improve domestic legislation for the provision of the fundamental rights for IDPs.

First of all, the Guiding Principles established internationally accepted notion of IDP as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border”.<sup>24</sup> As it can be seen from the text the reasons for becoming IDP is quite broad and main element is leaving homes but staying within the border of the state. The document itself having 5 sections touches upon various rights of IDPs,

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<sup>17</sup> Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137; Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267

<sup>18</sup> The Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3

<sup>19</sup> International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195

<sup>20</sup> Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13

<sup>21</sup> Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) A/RES/61/106, Annex I

<sup>22</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990, entered into force 1 July 2003) A/RES/45/158

<sup>23</sup> UNHCR, Guiding Principles on Internal Displacement (22 July 1998) ADM 1.1, PRL 12.1, PRO/98/109

<sup>24</sup> UNGP Introduction- Scope and Purpose para. 2

such as protection from and during displacement, resettlement and reintegration after returning back home, and so on. While Principle 5 lays down that all the necessary measures need to be taken in order to avoid the displacement of people,<sup>25</sup> Principle 3 puts the responsibility for protection and humanitarian assistance on national states.<sup>26</sup> The Principles that touch upon rights to housing, land and property of IDPs can be classified under two sections. The first section is the one where there are implicit references. First of all, as a general rule, the Guiding Principles stresses that IDPs should enjoy the same rights guaranteed by international and domestic legal instruments like other people in the jurisdiction of the state.<sup>27</sup> This means that IDPs are entitled to the protection of their house, land and property rights at the same level with the rest of the population. Furthermore, arbitrary displacement of persons from their houses or habitual residences is strictly forbidden under Principle 6 which is closely connected to house and land rights.<sup>28</sup> Here it needs to be stressed that right to property is violated more during armed conflicts as the houses are destructed and people are forced to leave their homes and land, the Principle specifically mentions that civilians should not be touched and moved out unless security of civilians and imperative military reasons demand so.<sup>29</sup> Here the duty bearer is not only the state that the civilians are citizens of, but also all the authorities and international actors that are parties to the conflict.<sup>30</sup> Moreover, bearing in mind that the IDPs lose their homes upon displacement, their right to adequate standard of living, therefore, to housing<sup>31</sup> and proper accommodation<sup>32</sup> plays an important role in temporary compensation for the breach of their right to property.

The second category of the Guiding Principles that makes direct reference to the right to house, land and property of IDPs are enshrined in Principle 21, 28 and 29. Principle 21 alone is about the protection of the right to property. Being one of the fundamental human right and enshrined in many international human rights documents, such as Universal Declaration on Human Rights<sup>33</sup> and European Convention on Human Rights<sup>34</sup>, it is also mentioned in the Guiding Principles as one of the most important rights. While Principle 21 prohibits arbitrary deprivation of property and possessions in first part, in the second one it goes more into details specifically forbidding pillage, direct or indiscriminate attacks or other acts of violence on property, its usage to shield military operations or objectives or as the object of reprisal, and destruction or appropriation as

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<sup>25</sup> UNGP Principle 5

<sup>26</sup> UNGP Principle 3

<sup>27</sup> UNGP Principle 1

<sup>28</sup> UNGP Principle 6

<sup>29</sup> UNGP Principle 6.2(b)

<sup>30</sup> UNGP Principle 5. Specific attention should be paid that while Principle 3 on the duties of national authorities is in Section I on General Principles, “all authorities” is mentioned in Section II on Protection from Displacement

<sup>31</sup> UNGP Principle 18

<sup>32</sup> UNGP Principle 7

<sup>33</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) Article 17

<sup>34</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Article 1 of Protocol 1

a form of collective punishment.<sup>35</sup> As it can be seen drafters of the Guiding Principles understand violation of the right to property of IDPs more in the context of armed conflicts, assumably based on the past experiences of breaches around the world. Most importantly, the Guiding Principles rules that property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use. This clause is very important as the conflict cases have proved that the occupying powers took advantage of the left properties and even settled its own civilians into the houses left behind.<sup>36</sup>

The next principle that explicitly mentions right to property is written down in Section V on Principles concerning Return, Resettlement and Reintegration. Principle 28 puts an obligation on states to facilitate the return of IDPs to their homes, which means the restitution of the right to property which was breached for the displacement reasons.<sup>37</sup>

The Principle mentions that such return should be voluntary and in case IDPs do not want to return to their former place of habitual residence, then they should not be forced to do so. In this spirit, Principle 29 lays down that “Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.”<sup>38</sup> The Principle tries to implement the old rule of law, *restitutio in integrum*, for the restoration of the right to property, and in case of non-availability, then the compensation for the damage suffered. Here a question occurs regarding who is responsible for the assist in return and restitution of the properties of IDPs if it is a result of armed conflict, and the answer can be found with the help of International Law Commission’s 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts where it is stated that a state which commits breach of international law attributable to it shall be responsible for the reparations for the results.<sup>39</sup>

Consequently, it can be said that the Guiding Principles was successful as a first document adopted for the protection of the rights of IDPs. Being a soft-law instrument, it shed a light on the very specific and blurry area playing a recommendatory role for national legislations. Drafters could go more into the details and provide very specific aspects for each right and its protection, however, as practice shows it could get less

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<sup>35</sup> UNGP Principle 21

<sup>36</sup> Eugene Kontorovich, 'Unsettled: A Global Study of Settlements in Occupied Territories' (2017) 9 J Legal Analysis 285  
BBC, “Why Armenia is welcoming Syrian Armenians” (2015) available at  
<https://www.bbc.com/news/av/world-middle-east-32438128> ;

Vasif Huseynov, “Armenian Resettlement from Lebanon to the Occupied Territories of Azerbaijan Endangers Peace Process” (2020) Eurasia Daily Monitor 17, available at  
<https://jamestown.org/program/armenian-resettlement-from-lebanon-to-the-occupied-territories-of-azerbaijan-endangers-peace-process/?fbclid=IwAR1At3oXlfMxAp3aVeTOouF5oHwWJQ68VW7axAcRy-vkxm13wkbmOzaWR1Y>

<sup>37</sup> UNGP Principle 28

<sup>38</sup> UNGP Principle 29

<sup>39</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1

endorsement from the states. Nonetheless, in the long run as it will be seen it helped to found a basis for further improvements in this area of international law. Its reference to right to housing, land and property several times throughout the document is more important as it paved the way for Pinheiro Principles that touched upon the issue in more definite terms.

### *Pinheiro principles on housing and property restitution*

Among other rights of IDPs, the breach of the right to property is more obvious one, as they flee and leave behind their belongings. Understanding this issue, international community focused to create a set of rules that would address the matter. As a result of long-lasting discussions, in 2004 Special Rapporteur Paulo Sergio Pinheiro presented its report alongside with the Principles (which were named after him) focusing on Housing and Property restitution for refugees and displaced persons (“Pinheiro Principles”).<sup>40</sup> The Pinheiro Principles was the first of its kind which comprehensively tried to cover all the issues. It also brought together refugees, IDPs and other people who are “other similarly situated displaced persons who fled across national borders but who may not meet the legal definition of refugee”<sup>41</sup> under one umbrella. Having 7 Sections, its main Articles can be divided into three parts.

One minor part can be specified as talking about international cooperation in the field. Section VI stresses the importance of mutual work of all international actors in protecting the right to property of IDPs and its restitution. Here not just states as international community, but also organizations such as the UN, international trade and finance institutions, peace operations are listed among the parties that should participate in the process of cooperation for restitution.<sup>42</sup>

The rest of the two parts can be characterised as substantive and procedural. In substantive part which is enshrined in Section II-IV main rights of IDPs concerning housing and property are laid down. While Section III brings together various rights such as right to non-discrimination,<sup>43</sup> equality between men and women,<sup>44</sup> protection from displacement<sup>45</sup> and freedom of movement<sup>46</sup> under the Overarching Principles, the rights related to house, land and property are disseminated in Section II, III and IV.

Section II comprises of just one principle namely, the right to housing and property restitution.<sup>47</sup> Here it is ruled that right to restitution is a primary right where any housing, land and/or property (“HLP”) of IDPs which they were arbitrarily or unlawfully deprived

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<sup>40</sup> UN Sub-Commission on the Promotion and Protection of Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, 28 June 2005, E/CN.4/Sub.2/2005/17

<sup>41</sup> Pinheiro Principle 1.2

<sup>42</sup> Pinheiro Section VI

<sup>43</sup> Pinheiro Principle 3

<sup>44</sup> Pinheiro Principle 4

<sup>45</sup> Pinheiro Principle 5

<sup>46</sup> Pinheiro Principle 9

<sup>47</sup> Pinheiro Principle 2.1

of, should be restored, determined by an independent, impartial tribunal or to be compensated if it is factually impossible to restore. More importantly, in its second paragraph the Principle 2 says that right to restitution is not conditional upon return of IDPs. These are the people whose right to property was violated and it needs to be restored in one way or another, and it is an essential element of restorative justice process.<sup>48</sup>

Section III delves more into various aspects of right to housing, land and property. Firstly, right to privacy and respect for the home prohibits arbitrary and unlawful interference with privacy of the home.<sup>49</sup> This right can also be read as IDPs should be returned exactly into their previous houses as it is where they left their homes, and it is connected with the privacy. Peaceful enjoyment of possession is another right written down in the Pinheiro Principles.<sup>50</sup> As it is commonly known, the right to property is not an absolute right and can be limited on some grounds.<sup>51</sup> This means that enjoyment of possession can also be restricted by the state on legal grounds. While IDPs also have equal rights with other citizens of states, for their properties the same limitation grounds can be applied and for that reason the Pinheiro Principles also accepts the limitation to the right to peaceful enjoyment of possession. However, the Pinheiro Principles also makes it clear that “states shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general principles of international law. Whenever possible, the “interest of society” should be read restrictively, so as to mean only a temporary or limited interference with the right to peaceful enjoyment of possessions.”<sup>52</sup> Last but not least, Section III also puts an obligation on states in relation to right to adequate housing. Principle 8 highlights that positive measures should be taken in order to assuage IDPs living in adequate living conditions.<sup>53</sup> This right is vital in the light of return of IDPs to the houses which are not in adequate situation (destroyed and have no access to water, electricity and other communal means), and obliges states to take action to build urban facilities/houses that have all the essential facilities to live.

Section IV has just one principle which is specifically about right to voluntary return in safety and dignity. It mentions that return to homes, lands and properties must not be made forcible, and be based upon free, informed and individual choice.<sup>54</sup>

The Pinheiro Principles is important from another aspect as it discusses in detail the procedural obligations that states should fulfil. Section V on Legal, Policy, Procedural and Institutional Implementation Mechanisms is dedicated to it with 11 distinct principles. Its Principle 11 states that any measure taken for the restitution of housing,

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<sup>48</sup> Pinheiro Principle 2.2

<sup>49</sup> Pinheiro Principle 6

<sup>50</sup> Pinheiro Principle 7

<sup>51</sup> ECHR (n 18) Protocol 1 Article 1 para 2; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123 Article 21

<sup>52</sup> Pinheiro Principle 7.2

<sup>53</sup> Pinheiro Principle 8

<sup>54</sup> Pinheiro Principle 10



land and property should follow standards and principles of international human rights, humanitarian and refugee law.<sup>55</sup> It is important that the Pinheiro Principles sees the process of restitution in accordance with and in whole those fields of public international law as they provide basic guidelines. Later on, Principle 12 stresses the importance of establishment of national procedures, institutions and mechanisms, and their main characteristics. While those procedures should be accessible, equitable, independent, non-discriminatory, transparent and timely,<sup>56</sup> they should also be gender and age sensitive taking into account “the best interest of the child” principle.<sup>57</sup> For the process to be effective, legislative, financial and administrative burdens are put on national authorities as a positive obligation.<sup>58</sup> Legislative measures are also stressed once again in Principle 18 where rule of law is mentioned as an overreaching principle of restitution process.<sup>59</sup>

Principle 13 talks about how the restitution claims procedure should work. While building upon Principle 12, it highlights that such procedure should be accessible to everyone free of charge, and simple and easy to understand.<sup>60</sup> Additionally, time frame for filing restitution claim should be set<sup>61</sup> and legal aid (if possible, free of charge) should also be provided for that purpose<sup>62</sup>. The wording “if possible” is a bit problematic, as it does not definitely put an obligation on states, and gives them a big room to manoeuvre, and places IDPs who are already in a worrisome situation into more disadvantage from financial standpoint in case they also have to pay for the legal aid.<sup>63</sup> For this whole process to be inclusive, Principle 14 underlines that affected communities should be involved in decision making procedure.<sup>64</sup>

The main problem IDPs can face during the restitution claims is the lack or inexistence of documentation confirming their right to property, especially in the context of armed conflicts, since IDPs left all their documents and other belongings in their home in which the armed conflict occurred. Understanding this issue, the Pinheiro Principles talks thoroughly about documentation and records during restitution process. Principle 15 states that states should establish national cadastral systems for the registration of HLP rights as an integral component of any restitution programme.<sup>65</sup> States should collect information regarding HLP via questionnaires<sup>66</sup> and issue documents confirming right to property when requested by IDPs<sup>67</sup>. In case, IDPs fled during violence and little

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<sup>55</sup> Pinheiro Principle 11

<sup>56</sup> Pinheiro Principle 12.1

<sup>57</sup> Pinheiro Principle 12.2

<sup>58</sup> Pinheiro Principle 12.3

<sup>59</sup> Pinheiro Principle 18.1

<sup>60</sup> Pinheiro Principle 13.1, 13.2 and 13.7

<sup>61</sup> Pinheiro Principle 13.9

<sup>62</sup> Pinheiro Principle 13.11

<sup>63</sup> Here NGO activities for legal assistance comes to forefront helping of IDPs. See for example, Norwegian Refugee Council, “Evaluation Report: ICLA in Azerbaijan -Counselling for Change; Information, Counselling and Legal Assistance Programme in Azerbaijan” (2008) Jenty Kirsch-Wood and Sevinj Amirova (available at <https://www.urban-response.org/system/files/content/resource/files/main/erd-3614-full.pdf>)

<sup>64</sup> Pinheiro Principle 14.1

<sup>65</sup> Pinheiro Principle 15.1

<sup>66</sup> Pinheiro Principle 15.6

<sup>67</sup> Pinheiro Principle 15.5

documentary exists about ownership and possession, then conclusive presumption should be that they have properties there and restitution claims should be adopted.<sup>68</sup>

In a context of armed conflicts and illegal settlements, another important issue comes to the forefront which is secondary occupation. During the occupation, although it is prohibited by International Humanitarian Law,<sup>69</sup> the occupying power can move its citizens to the houses or lands in the occupied territories, or the remaining population can accommodate the houses left behind by the IDPs. In that case upon the liberation of the territories and restitution of HLP rights of IDPs the fate of those house and land occupants becomes interesting too. Bearing in mind that the transferred population of the occupant state can also end up without adequate housing, the Pinheiro Principles also addressed the issue. In Principle 17 there is a procedural obligation stressing that states “should ensure that secondary occupants are protected against arbitrary or unlawful forced eviction, and ... in cases where evictions of such occupants are deemed justifiable and unavoidable for the purposes of housing, land and property restitution, that evictions are carried out in a manner that is compatible with international human rights law and standards”, among which are due process, genuine consultation, adequate and reasonable notice, and the provision of legal remedies.<sup>70</sup> However, their rights should not prejudice or prevail over the property rights of IDPs, and if secondary occupants are justifiably evicted and do not have any other houses, then they should be provided with homes so that they do not end up in inhuman situations.<sup>71</sup>

One of the components of restitution process of IDP’s properties is the states’ obligation of compensation. Such compensation should be full, effective, monetary or in kind, and must be used especially when remedy of restitution is not available.<sup>72</sup> The Pinheiro Principles stresses that in case the houses are destroyed and need to be rebuilt then the combination of restitution and compensation should be applied in order to help IDPs.<sup>73</sup>

Last but not least, a specific obligation that enables all other rights and obligations to be implemented, namely enforcement of restitution decisions and judgments is mentioned. States are obliged to create agencies and institutions that would process restitution claims and enforce their implementation. According to the Pinheiro Principles, the decisions are legally binding on all bodies and should be respected and enforced.<sup>74</sup>

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<sup>68</sup> Pinheiro Principle 15.7

<sup>69</sup> International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287

<sup>70</sup> Pinheiro Principle 17.1

<sup>71</sup> Pinheiro Principle 17.3

<sup>72</sup> Pinheiro Principle 21.1

<sup>73</sup> Pinheiro Principle 21.2

<sup>74</sup> Pinheiro Principle 20.2

In general, although there are no legally enforceable instruments specifically addressing IDPs at an international level, it does not mean that the available soft international law instruments are not useful at all. The Guiding Principles and the Pinheiro Principles lay the ground for the work at regional and national level. Providing initial guidelines, they help to build domestic legal acts that create better social provisions and protection of fundamental rights and freedoms, especially in the field of HLP rights. Additionally, what needs to be remembered is the Framework on Durable Solutions for Internally Displaced Person<sup>75</sup> (“Framework”) which was adopted in 2009 and should be applied by states in conjunction with the Guiding Principles and Pinheiro Principles. Revolving around 4 questions, the Framework tries to find sustainable answers to the issues concerning IDPs, including property rights. Addressing the question how to measure the success achieved for the effective and accessible mechanisms to restore HLP in its paragraph 76-83, several main indicators are stressed which are:

- *Existence of effective and accessible mechanisms to resolve HLP disputes;*
- *Percentage of IDP land and property claims resolved and enforced;*
- *Percentage of IDPs remaining without adequate housing;*
- *Percentage of destroyed or damaged homes of IDPs adequately repaired;*
- *IDPs access to support programs (including access to credits) to restore or improve HLP on the same basis as the resident population.*<sup>76</sup>

As the Guiding Principles and Pinheiro Principles contain very same principles enshrined in the international human rights conventions and can be addressed in Universal Periodic Review reports or can be used by Treaty Bodies<sup>77</sup> and regional human rights mechanisms, enforcement of these principles takes place, although they are soft law instruments.

### 1.1.3 Regional instruments addressing the HLP rights of IDPs: Council of Europe

While talking about international instruments, the role of the regional documents should be stressed since they are more specific addressing the situation in target/member states. For the sake of space and the purpose of the paper, we will take into consideration the documents adopted at the Council of Europe (“CoE”) level. Several member states, such as Cyprus, Azerbaijan, Georgia and Ukraine, suffer from the existence of problems related with IDPs and their rights. Being a regional organization focusing on human rights, democracy and rule of law, the CoE adopted various

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<sup>75</sup> Inter-Agency Standing Committee, Framework on Durable Solutions for Internally Displaced Person (2009) The Brookings Institution – University of Bern Project on Internal Displacement, Washington, USA

<sup>76</sup> Framework para 82

<sup>77</sup> At UN level as Charter and Treaty mechanisms accordingly.

recommendations and resolutions at different institutional levels concerning these member states and rights of IDPs.

One of such important documents is Recommendation Rec(2006)6 of the Committee of Ministers.<sup>78</sup> Stressing the role of the CoE in the protection of human rights and situation in the member states with IDP population, the Recommendation refers to the Guiding Principle as a basis, and mentions its main principles such as non-discrimination, national states as primary duty-bearers, and adding that international humanitarian law and international human rights law should be followed. Moving further the Recommendation tries to align the rights of IDPs with those enshrined in the European Convention of Human Rights.<sup>79</sup> The Recommendation also mentions specifically HLP rights of IDPs. In paragraph 8 it highlights the right to enjoyment of property and possession, and repossession of the property left behind. It adds that in case of deprivation of property, there should be adequate compensation.<sup>80</sup> Paragraph 12 also talks about the right to voluntary and safe return to the homes or habitual residences,<sup>81</sup> which is related to getting back the property. Finally, Recommendation is interesting from another perspective, where it refers to the consultations with IDPs on any matter concerning them which can be indirectly related to restitution and return of them to their places of previous habitual place.<sup>82</sup> It means that before presenting any plan about the return and compensating the violation of right to property, their views should be taken into account.

Another important document is Recommendation 1570 (2002) of Parliamentary Assembly (“PACE”), where various concerns, including HLP, are generally addressed, and focuses on three South Caucasian states. The document urges international community to provide funding for housing, job and education of IDPs, members states to facilitate the return to their places of origin, access to lands and property.<sup>83</sup> The document also brings up durable solutions for IDPs to be provided, including for their integration.<sup>84</sup>

One of the most recent documents is Resolution 2214 (2018) again by PACE which focuses on humanitarian needs and rights of IDPs in Europe, more specifically in member states having IDP population.<sup>85</sup> Remembering that there are more than 4 million IDPs within Europe and referring UN Resolutions on the situation in different member states, the Resolution invites all the authorities to protect and restore the right to property of IDPs and abide by the judgments of the European Court of Human Rights (“ECtHR”)

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<sup>78</sup> Council of Europe (Committee of Ministers) “Recommendation Rec(2006)6 of the Committee of Ministers to member states on internally displaced persons” (5 April 2006)

<sup>79</sup> Rec 2006 para 5-6

<sup>80</sup> Rec 2006 para 8

<sup>81</sup> Rec 2006 para 12

<sup>82</sup> Rec 2006 para 11

<sup>83</sup> Council of Europe (Parliamentary Assembly) “Recommendation 1570 (2002) Situation of refugees and displaced persons in Armenia, Azerbaijan and Georgia” (27 June 2002) para 9

<sup>84</sup> Rec 1570 para 4

<sup>85</sup> Council of Europe (Parliamentary Assembly) “Resolution 2214 (2018) Humanitarian needs and rights of internally displaced persons in Europe” (25 April 2018)

which discussed the breach of Article 1 of Protocol 1, right to property.<sup>86</sup> It also invites in general terms to assess the needs of IDPs, including and in particular, housing.<sup>87</sup>

Like the UN documents, the CoE recommendations and resolutions are also soft law instruments, however, they show the political will behind and can be more strongly backed up with the binding ECtHR judgments.

## 2.2. Domestic legislation concerning HLP rights of IDPs

### *General Legislation on HLP rights*

The Republic of Azerbaijan after gaining its independence from the USSR in 1991 vowed to take the path of democratization and adopted various legislative acts that would provide protection for human rights. In 1995 the Constitution was adopted via popular referendum which is the highest law in the legislative system.<sup>88</sup> Its second part which enshrines fundamental human rights and freedoms also mentions right to property which is protected by the state together with no dispossession without a court decision clause and fair compensation requirement.<sup>89</sup> Everyone has a right to property without discrimination bearing in mind the Article 25 on Right to Equality<sup>90</sup>. That means the right to property of IDPs is protected at the same level like other citizens by the Constitution. In 2016 the third referendum was held on amendments to some articles of the Constitution that also affected right to property with 2 new clauses.<sup>91</sup> These clauses brought new limitations on the right to property which is non-absolute right. However, the grounds for limitations such as “social responsibility”, “social justice” and “effective use of land” are very broad and as they are not defined anywhere, can be interpreted unfairly with discretionary powers as stressed by Venice Commission.<sup>92</sup>

The Constitution also provides protection for the right to inviolability of the home (residence) and highlights that without the will of the resident no one can enter the house, except cases specified very narrowly by law and with court decision.<sup>93</sup> This very right of IDPs who were forced to leave their houses behind, and some of them populated by other civilians was violated and needs to be reparated. This legislative

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<sup>86</sup> Res 2214 para 5.2 on Cyprus, 6.3 on Azerbaijan, 7.2.6 on Georgia, 8.2 on Ukraine

<sup>87</sup> Res 2214 para 3

<sup>88</sup> Constitution of the Republic of Azerbaijan (1995) (AZE) Article 147-148 (available at [https://www.constituteproject.org/constitution/Azerbaijan\\_2016?lang=en](https://www.constituteproject.org/constitution/Azerbaijan_2016?lang=en))

<sup>89</sup> Constitution Article 29

<sup>90</sup> Constitution Article 25

<sup>91</sup> Constitution Article 29 paras V and VI

<sup>92</sup> European Commission for Democracy Through Law (Venice Commission), “Azerbaijan: Preliminary Opinion on the Draft Modifications to the Constitution Submitted to the Referendum of 26 September 2016” (20 September 2016) Opinion No. 864 / 2016, CDL-PI(2016)010, para 36 (available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2016\)010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2016)010-e))

<sup>93</sup> Constitution Article 33



norm can also be read in conjunction with Article 43 on right to housing/residence that explicitly prohibits deprivation of residence<sup>94</sup>.

The next legislative act that provides details about right to property is the Civil Code.<sup>95</sup> Being one of the biggest law combining together various legal institutions such as inheritance, insurance, contracts, banking, the Civil Code touches upon right to property which is the cornerstone of civil legal relationships. Article 152 gives elements of right to property as “acknowledged right, protected by the state, of a subject to possess, use and dispose of property belonging to such subject at their discretion”.<sup>96</sup> Hereby law once again recognizes the right to property and puts an obligation on state to protect the right from violations. The Civil Code also offers means for the protection of the right via its Article 157.<sup>97</sup> While the first paragraph of the Article talks about the right to request acknowledgement of ownership rights,<sup>98</sup> the second paragraph enables the owners to claim their property from another’s illegal possession<sup>99</sup>. In connection with the last element, the fifth paragraph rules that upon claim, dishonest owner<sup>100</sup> shall compensate to property owner all damage incurred as a result of holding his/her property. Lastly, the Article provides limited grounds for the confiscation of the property which are “laying and installation of roads and other communication lines of national importance, to ensure full protection of the state border in the border regions, construction of defence-security objects, construction of the objects of mining industry of national importance”<sup>101</sup> which also refers to the Law of the Republic of Azerbaijan “On confiscation of land for public use”<sup>102</sup>. However, such confiscation cannot happen without fair compensation as ruled by the law. Remembering the situations in some cities which were destructed during the conduct of hostilities and the plans of the Republic of Azerbaijan to rebuild those areas some confiscation of land can take place for the above-mentioned reasons, where the state has to provide compensation to the IDPs for those lands and property.

Another legislative act that talks upon HLP rights is the Housing Code adopted in 2009.<sup>103</sup> Built on the Constitution, its Article 5 stresses the privacy and inviolability of home, and provides that unless provided by the law, no one may be evicted from his/her place of residence or his/her right to use the area where he lives may not be restricted<sup>104</sup>. The Housing Code underlines that protection of housing rights is provided by the laws and through the court procedure<sup>105</sup> and two most important ways are recognition of the

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<sup>94</sup> Constitution Article 43

<sup>95</sup> Civil Code of the Republic of Azerbaijan (1999) (AZE) (available at <http://e-qanun.az/framework/46944>)

<sup>96</sup> Civil Code Article 152.1

<sup>97</sup> Civil Code Article 157

<sup>98</sup> Civil Code Article 157.1

<sup>99</sup> Civil Code Article 157.2

<sup>100</sup> Dishonest owner - a person who knew or should have known that their ownership is incorrect. This can be an illegal settler who took over houses and lands of IDPs or the entity who facilitated or supported such illegal settlement

<sup>101</sup> Civil Code Article 157.9. The clause was first inserted in 2004 to the in 1999 adopted Code, and was respectively amended in 2012.

<sup>102</sup> Law on Confiscation of Land for Public Use (2010) AZE (available at <http://www.e-qanun.az/framework/19613>)

<sup>103</sup> Housing Code of the Republic of Azerbaijan (2009) (AZE) (available at <http://e-qanun.az/framework/46955>)

<sup>104</sup> Housing Code Article 5.3

<sup>105</sup> Housing Code Article 9.1



right to house,<sup>106</sup> and restoration of the situation existing before the violation of the right to housing and prevention of actions that violate or threaten to violate this right<sup>107</sup>. These clauses are essential for IDPs as they provide legal means for the recognition and restoration of their rights to their home. Additionally, the Housing Code encapsulated some norms regarding provision of IDPs with houses during their flight. This can also be seen as an action of the state to fulfil its obligation under right to adequate housing. Article 91 names housing areas for the temporary placement of IDPs among the areas which are classified as residential areas of the special purpose housing fund.<sup>108</sup> Article 96 clarifies that those housing funds are intended for the residence of citizens who are considered IDPs or have refugee status in accordance with the procedure established by law.<sup>109</sup> Following that Article 107 stresses that the rules for the provision of IDPs with houses are established and conducted by the legislative act,<sup>110</sup> which is the 2017 Decision of the Cabinet of Ministers (“Decision”).<sup>111</sup> The Decision lays down that the IDPs who lives in inadequate situation can apply<sup>112</sup> to get the house from the state and they will be provided temporarily with houses based on the number of the family members<sup>113</sup>. However, according to Article 3.3 of the Decision for those houses IDPs are not conferred any property rights (no sale, rent, no change or whatsoever except living there).<sup>114</sup> The reasoning behind can be that state planned to reside those IDPs back to their lands once the territories are liberated. The question now is whether IDPs will be offered to choose between the house they were provided temporarily and the one that will be offered in the liberated areas as restoration. This right to choose will be probably presented to the IDPs as their right to property needs to be restored in any case and on a voluntary basis.

Lastly, another legislative act that touches upon the HLP rights in general manner but also concerns IDPs is the Land Code, which briefly mentions that IDPs temporarily settled in the relevant area shall be preferred when equal proposals are submitted during land auctions or competitions for the purpose of transferring municipal lands to ownership (lease).<sup>115</sup> The Land Code creates positive discrimination bearing in mind the disadvantaged situation of IDPs.

General legislative acts on HLP rights provides various ways for the protection of the right to property and as can be seen above creates better protection in specific circumstances for IDPs.

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<sup>106</sup> Housing Code Article 9.2.1

<sup>107</sup> Housing Code Article 9.2.2

<sup>108</sup> Housing Code Article 91.1.5

<sup>109</sup> Housing Code Article 96

<sup>110</sup> Housing Code Article 107

<sup>111</sup> Decision of the Cabinet of Ministers of the Republic of Azerbaijan (2017) (AZE) (available at <http://www.e-qanun.az/framework/34945#>)

<sup>112</sup> Annex 2 to the Decision

<sup>113</sup> Decision Article 4

<sup>114</sup> Decision 3.3

<sup>115</sup> Land Code of the Republic of Azerbaijan (1999) (AZE) Article 56.4 (available at <http://e-qanun.az/framework/46942>)

### *Special legal acts on HLP rights of IDPs*

Besides the general legislative legal acts, there are special ones that concern solely IDPs and their rights. They address myriads of issues regarding IDPs such as their economic and social rights, which bodies are explicitly dealing with their problems, the scope of obligations on the state to make their situation better, etc. The first ever law in the sphere was the Law on the Status of Refugees and Internally Displaced Persons (“the First Law”) adopted in 1992 during the first Karabakh War.<sup>116</sup> The First Law was very brief and defined main notions and issues concerning IDPs and refugees. The analysis of the First Law shows that it was more focused on the refugees rather than IDPs. Even in Article 1 the First Law upon giving the understanding of “internally displaced person” made a hybrid notion and defines IDP as “persons who were forced to leave their permanent place of residence in the territory of the Republic of Azerbaijan due to persecution for their nationality, race and citizenship, religious beliefs, language, as well as political beliefs, belonging to a certain social group, and a real threat to their life, family and property; or citizens of the Republic of Azerbaijan who have been forced to leave their permanent residence in another country and arrived in the Republic of Azerbaijan”.<sup>117</sup> The First Law talked in general about social rights of IDPs and briefly mentions that they should be provided with job<sup>118</sup> and housing,<sup>119</sup> however, it did not give specific details about how it should be done and which bodies were responsible besides referring to the State Committee for Work with Persons Forced to Leave Permanent Residences.<sup>120</sup>

In order to fill in the gaps and provide more details and protection for the rights of IDPs, the Law on the “Status of Refugees and Internally Displaced Persons (within the country)” (“the Second Law”) was adopted in 1999.<sup>121</sup> Nonetheless, the Second Law can be deemed to be the better version of the previous one, although it has also its own shortcomings. First of all, the Second Law differentiates IDPs from refugees and classifies IDPs rightly as “a person who was forced to leave his permanent place of residence as a result of military aggression, natural and man-made disasters in the territory of the Republic of Azerbaijan and moved to another place within the country”<sup>122</sup> providing separate and closer notion to the one enshrined in the Guiding Principles. The Second Law lays down various rights of the IDPs, and comprehensive reading shows that they are mostly economic and social rights. The main rights that can be connected with the housing and property rights are:

- *to go to a temporary place of residence and take away property without payment;*

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<sup>116</sup> Law on the Status of Refugees and Internally Displaced Persons (1992) (AZE) (available at <http://www.e-qanun.az/framework/7750>)

<sup>117</sup> First Law Article 1

<sup>118</sup> First Law Article 4

<sup>119</sup> First Law Article 5

<sup>120</sup> First Law Article 7 and 8

<sup>121</sup> Law on the Status of Refugees and Internally Displaced Persons (within the country) (1999) (AZE) (available at <http://www.e-qanun.az/framework/4757>)

<sup>122</sup> Second Law Article 1

- to receive one-time and other state-provided assistance;
- to raise the issue of compensation for material and other damage;
- to apply to the court for the protection of violated rights;
- the right to return to previous places of residence.<sup>123</sup>

Article is important from different points. Besides entitling IDPs to compensation/restitution and means to protect their rights, following the previous laws and international legal norms stressing that other places are “temporary residence places” the general spirit of the Second Law shows that return of IDPs was the unavoidable end. The Second Law also stipulates that there are central executive bodies dealing with the issues of IDPs and deciding on the award of the IDP status.<sup>124</sup> Unlike the First Law, the Second Law does not specifically name any state body, but it is known to be the State Committee for Refugee and IDP issues of the Republic of Azerbaijan (“the Committee”). However, it does not mean that other executive bodies do not play any role. For example, the Order of the President of the Republic of Azerbaijan on “Approval of the State Program on improvement of living conditions and increase of employment of refugees and IDPs” names various Ministries such as Ministry of Labour and Social Protection, Ministry of Finance, State Oil Fund, etc.<sup>125</sup>

Lastly, on housing and property matters, Article 17 touches upon numerous rights. It puts an obligation of provision of IDPs with temporary or permanent residence on the state bodies and IDPs are compensated for the costs occurred during their movement between their temporary and permanent places of residence.<sup>126</sup> Additionally, considering their economic situation Article offers a special land right-preference, emphasizing that at the request of the IDP, s/he is provided with a plot of land for use in the amount and manner prescribed by law, depending on the place of residence.<sup>127</sup> Another benefit is that upon sale and purchase of an apartment or house, IDPs are not charged with any notarial fees.<sup>128</sup> The Second Law is significant as it accentuates more particular elements of IDPs’ provision of HLP rights, and offers preferences in some respective matters as described above.

Together with the Second Law, another legislative act was adopted by the Parliament of the Republic of Azerbaijan which enshrined social welfare issues of IDPs. The Law on Social protection of IDPs and People who are in Equal Situation with Them (“Law on Social Protection”) talks about vital social rights, although very briefly (just in 15 Articles).<sup>129</sup> Despite being adopted on the same date, the notion of IDP is different between those two laws. The Law on Social Protection lays down that “persons who

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<sup>123</sup> Second Law Article 6

<sup>124</sup> Second law Article 9

<sup>125</sup> Order of the President of the Republic of Azerbaijan on Approval of the State Program on improvement of living conditions and increase of employment of refugees and Internally Displaced Persons (2004) (AZE) (available at <http://www.e-qanun.az/framework/6261>)

<sup>126</sup> Second Law Article 17

<sup>127</sup> Second Law Article 17

<sup>128</sup> Second Law Article 17

<sup>129</sup> Law on Social Protection of Internally Displaced Persons and people equal to them (1999) (AZE) (available at <http://www.e-qanun.az/framework/4758>)

were forced to leave their permanent places of residence in the territory of the Republic of Azerbaijan as a result of foreign military aggression, occupation of certain territories or under constant fire shall be considered as IDPs for the purposes of this Law”,<sup>130</sup> which is quite narrow in comparison to the Second Law. It can be argued that the people who became IDPs because of reasons other than military aggression will not be provided with the social benefits shown in the Law on Social Protection. Nevertheless, such an argument can be deemed to be not valid, since the First and Second Laws already afforded those benefits, though in general terms. It needs to be mentioned that there is also a positive element of this norm. It adds people who had to leave their houses because of being under constant fire. This is very unique and takes very humane approach understanding the situation of people who live close to the line of contact and risk their lives and property.

Among the benefits to which IDPs are entitled to we can see: a) provision of temporary housing; b) provision of employment; c) social security; d) medical care; e) ensuring the right to education; f) transport and housing/communal services and other benefits.<sup>131</sup> Mentioning of provision adequate housing over and over in various legal acts is important as it stresses the obligation of state not only under international treaties, but also domestic laws. In Article 5 the Law on Social Protection gives more details on this specific matter. According to the first part, the settlement of IDPs is carried out by the relevant executive authorities, and residential, administrative and ancillary buildings, as well as other buildings that are suitable for living or are able to be made suitable, can be used for settlement purposes.<sup>132</sup> Although in this way the norm tries to provide adequate housing for IDPs, past experiences showed that such settlement caused much trouble.<sup>133</sup> They were placed in kindergartens, schools, dormitories of the universities, which sometimes disrupted the education process or students faced shortage of accommodation during their studies. Article goes on further that if it is not possible to accommodate IDPs in such buildings or if the population density in certain settlements does not allow it, they are housed in camps specially organized for IDPs.<sup>134</sup> Despite the fact that the Law on Social Protection highlights that the camps must meet the requirements for living, it does not lay down explicitly any such requirements.<sup>135</sup> Additionally, with camps Azerbaijan also faced terrible situations in the central parts of the country.<sup>136</sup> Finally, regarding the housing right of the IDPs, it is written down that

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<sup>130</sup> Law on SP Article 2

<sup>131</sup> Law on SP Article 4

<sup>132</sup> Law on SP Article 5

<sup>133</sup> See for example: The Brookings Institution-London School of Economics Project on Internal Displacement, ““Can you be an IDP for twenty years?” A comparative field study on the protection needs and attitudes towards displacement among IDPs and host communities in Azerbaijan” (2011) (available at [https://www.brookings.edu/wp-content/uploads/2016/06/12\\_idp\\_host\\_communities\\_azerbaijan.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/12_idp_host_communities_azerbaijan.pdf))

<sup>134</sup> Law on SP Article 5

<sup>135</sup> See for example here international standards such as Minimum Standards for Camp Management (<https://reliefweb.int/sites/reliefweb.int/files/resources/Minimum%20Standards%20for%20Camp%20Management%20-%20Field%20testing%20edition.pdf>) can be used.

<sup>136</sup> See European Commission and UNHCR Azerbaijan: Analysis of Gaps in the protection of Internally Displaced Persons (IDPs) (available at <https://www.unhcr.org/4bd7edbd9.pdf>)

independent temporary settlement of IDPs may be allowed if it does not violate the rights and legitimate interests of other persons, and in such cases, the relevant executive authorities must ensure the resettlement of IDPs within the settlement. However, there have been cases where the IDPs occupied the houses of other people which resulted in distress, discriminative behaviour against IDPs and court decisions which forced them to leave the occupied homes, which was not implemented by the executive bodies.<sup>137</sup>

Lastly, Article 6 lays down provision of IDPs with lands, as well. For the temporary compensation of lands they lost, to increase their well-being and employment level, in accordance with the state program and the Law on Social Protection, land plots were temporarily allocated to IDPs at the expense of the state and municipal land funds in order to help them to be engaged in agriculture in the areas where they live.<sup>138</sup> Analysis of the Law on Social Protection shows that they are good legislative norms for the provision of HLP rights of IDPs, however, at some points during their implementation in reality, there were problematic elements.

While talking about the special legal acts regulating the HLP rights of IDPs, the state bodies dealing exclusively with their issue should also be mentioned. Following the clashes and movement of people across the borders of Azerbaijan and Armenia SSR, in 1989 the State Committee of the Azerbaijan SSR for Work with Persons Forced to Leave Permanent Residences was created in order to resolve issues related to the reception, accommodation and livelihood of persons forced to leave their permanent residence.<sup>139</sup> Following the adoption of the First Law in 1992, the name was changed to the State Committee for Refugee and IDP issues of the Republic of Azerbaijan. Currently, the Committee functions on the basis of the Statute of the Committee which was approved via the Decree of the President. Article 1.1 gives the scope of work of the Committee as the central executive body implementing the state policy in the field of accommodation, resettlement, repatriation, social protection of IDPs, improvement of their social and housing conditions in the territories liberated from occupation.<sup>140</sup> The text of the Article makes it clear that it is the main body working on the current resettlement issue. However, following the liberation there are other bodies also involved which will be discussed later. The Statute puts various obligations on the Committee among which are some that concern housing and property issues. While Article 2.3 stresses that the Committee should organize repairment and construction of housing and social facilities for IDPs and the provision of construction facilities with relevant design and estimate documents,<sup>141</sup> Article 2.6 lays down that it shall be the Committee that should carry out

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<sup>137</sup> See for example *Gulmammadova v Azerbaijan* (available at [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-98395%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-98395%22]}))

<sup>138</sup> Law on SP Article 6

<sup>139</sup> State Committee for Refugee and IDP issues of the Republic of Azerbaijan, “History” (available at <http://idp.gov.az/az/content/1/parent/1>)

<sup>140</sup> Statute of the State Committee for Refugee and IDP issues of the Republic of Azerbaijan (2005) (AZE) Article 1.1 (available at <http://idp.gov.az/az/content/2/parent/1>)

<sup>141</sup> Statute Article 2.3



purposeful work with relevant state bodies, international and non-governmental organizations in order to create conditions for the return of IDPs to their places of forced departure<sup>142</sup>. These aspects are very important as here the state body that should coordinate the work for the resettlement and restitution of the property via building houses is clearly established. The Statute even goes further in this sense where it provides more details and underlines that it is one of the functions of the Committee to deal with the return of IDPs to their former permanent residences, works on restoration of liberated settlements and villages, normalization of communication lines, roads, electricity lines, water and gas pipelines, production areas, social facilities and to interact with authorities, international and local non-governmental organizations and financial institutions.<sup>143</sup>

To sum up, legislative acts adopted so far before the liberation of the occupied territories provides good level of protection for HLP rights of IDPs, despite hardships at the implementation phase. While general ones talk about property rights applicable to all citizens, special legal acts address the IDP-particular issues, bearing in mind their unique and hard situation.

### 2.3. Actions taken after the Second Karabakh War concerning IDPs

After the November 10<sup>th</sup> Declaration,<sup>144</sup> hopes were very high regarding the situation of IDPs. The liberation of most of the territories from the occupation meant that hundreds of thousands of IDPs would be able to get back to their homes they left almost 30 years ago. However, it was clear that it would not be happen over a night. Some residential areas were completely destroyed during the First Karabakh War and was never restored by Armenia, while others were heavily mined,<sup>145</sup> which meant that they have to be cleared first.

However, even before the Declaration and during the ongoing war, for the organization of the management in the liberated territories the President signed the Decree.<sup>146</sup> As it could be seen from the name it was on the organization of temporary special administration, and temporary commandants were appointed by the Ministry of Internal Affairs which coordinated the work with Ministry of Defence and State Border Service.<sup>147</sup> The Operational Headquarters were established which have Ministries of Economy, Agriculture, Finance, Ecology, etc. as members, and commandants have to

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<sup>142</sup> Statute Article 2.6

<sup>143</sup> Statute Article 3.20

<sup>144</sup> President of the Republic of Azerbaijan, "Address by the President of the Republic of Azerbaijan Ilham Aliyev"(10 November 2020) (available at <https://en.president.az/articles/45924>)

<sup>145</sup> Euroasianet, "Armenia and Azerbaijan exchange detainees for mine maps" (2021) <https://eurasianet.org/armenia-and-azerbaijan-exchange-detainees-for-mine-maps>

<sup>146</sup> Decree of the Republic of Azerbaijan on was on the Organization of Temporary Special Administration in the liberated territories of the Republic of Azerbaijan (2020) (AZE) (available at <http://e-qanun.az/framework/46229>)

<sup>147</sup> Decree Commandant para 2&3



work together with them.<sup>148</sup> For the land and property matters the commandants have to cooperate with the Ministry of Economy for preliminary inventory and protection of infrastructure facilities, land plots and other real estate objects, and for determination of lands suitable for agriculture with the Ministry of Agriculture.<sup>149</sup> Currently the commandants still conduct the management. Actions to take into account HLP issues are welcome, but it is not clear why the Committee was not involved in the work. Following the Declaration, the first thing that became the topic of public discussion was whether the IDPs would be returned to the liberated territories forcefully or they would be presented with options. According to the news and press interviews by the Committee, the return would happen voluntarily,<sup>150</sup> which would be in line with international and domestic legislation. However, the question here would be whether in case of decision of no return, IDPs who are settled in public houses would be asked to leave or allowed to stay. As mentioned above, the IDPs do not have any property rights to those houses and are temporarily resided there, but it should not be forgotten that they had land and properties in Karabakh. The recommended option in case of no return would be that the houses that they are resided are offered as compensation (the value is being taking into account fairly) and the lands and houses (if they are in proper condition) that left behind are offered other citizens in a competitive basis.

The next legislative act after the Second Karabakh War was the creation of Coordination Headquarter. The President signed the Order on November 24, 2020 and tasked heads of several state bodies to cooperate and coordinate for the purposes of resolution of socio-economic, humanitarian, organizational and other urgent issues arising from the implementation of the provisions of the Declaration, as well as in the liberated territories of the Republic of Azerbaijan.<sup>151</sup> The list of bodies is very long and as the Declaration has manifold impact one can see variety of state institutions involved in its implementation like Ministries of Internal Affairs, of Justice, of Economy, of Agriculture. Among those bodies, the Committee is also mentioned. An Interdepartmental Centre has been formed at the Headquarter as well. There are 16 working groups that have been established, and the action plan to be prepared by these Working Groups on the basis of the Strategic Action Plan<sup>152</sup> will address the issue of providing some benefits and concessions to IDPs returning to these areas.<sup>153</sup> Although the Committee is stressed as

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<sup>148</sup> Decree Commandant para 4

<sup>149</sup> Decree Commandant para 7.4 & 7.5

<sup>150</sup> Report Information Agency, "State Committee for Refugees and IDP issues: Deputy Chairman's Opinions Misunderstood" (2020) (available at <https://report.az/qarabag/mecburi-kockunler-dogma-torpaqlarina-qayitmaq-ezmindedir/>)

<sup>151</sup> Order of the President of the Republic of Azerbaijan on Establishment of the Coordination Headquarters for Centralized Settlement of Issues in the Liberated Territories of the Republic of Azerbaijan" (2020) (AZE) (available at <https://president.az/articles/47738>)

<sup>152</sup> Kaspi, "A Strategic Action Plan has been developed to restore the liberated territories (2021) (available at <https://kaspi.az/az/isaldan-azad-edilmis-erazilerin-berpasi-ile-bali-strateji-fealiyyet-plani-hazirlanib>)

<sup>153</sup> APA, "Privileges and concessions are planned to be provided for IDPs returning to the liberated territories" (2021) (available at [https://apa.az/az/xeber/sosial\\_xeberler/Isgaldan-azad-ediln-razilr-qayidacaq-mcburi-kockunlr-ucun-imtiyazlar-v-guzstlr-nzrd-tutulur-623490](https://apa.az/az/xeber/sosial_xeberler/Isgaldan-azad-ediln-razilr-qayidacaq-mcburi-kockunlr-ucun-imtiyazlar-v-guzstlr-nzrd-tutulur-623490))

the main body of contact in the laws analysed above, in this Order its role seems to be minimized. As a government institution specialized in the field and having broad information about the IDPs and their problems, the Committee should have been given a main role in the work of Headquarter.

Apparently, the main concern related to IDPs was about their resettlement and restitution of their properties. Even the Chairperson of the Committee stressed that IDPs' return and their property rights are prioritized over other issues, and restitution and land allocation shall prevail over other persons' intentions to buy land and property in the liberated areas.<sup>154</sup> For a long time now, the Committee conducts a survey among IDP population. While it is also on their website,<sup>155</sup> the visits by the Committee members to the IDP-populated urban areas such as dormitories, temporary housing places were conducted so that full research can be made. The questions are divided into three categories. While the first group tries to gather information about personal and demographic data, the second set tries to learn the opinion of IDPs about the return. The third group of questions is about employment status. Beside asking for name, surname and component members of family, there is a question about type of settlement that IDPs live. Arguably, it is for scheduling and prioritizing the people who live in worse housing conditions like dormitories. The number of family members are important probably because in case of compensation and restitution of property, allocation of lands and houses, every member is accounted for and receives his/her own fair share. Questions about intention to return are simply written such as "Would you like to return to the liberated territories?", "In case no, why?", "Will you need support for return and in case yes what kind of?" "What will you do after return?". The participants are presented with other options and there is no free answer table where each individual can type its response, if wanted. Last but not least, in the third part of the questionnaire, IDPs are asked about their employment and income situation. Questions such as income status of the person and its family members can be understood again from priority perspective, however, it needs to be reminded that it has nothing to do with restitution of property rights, and all IDPs are entitled under international and domestic legislation to it no matter their economic and social situation.

For the purpose of reconstruction and renovation in the liberated territories, the President created "Karabakh Revival Foundation" ("Foundation") which is public legal entity via a Decree.<sup>156</sup> As stressed in the document, it is necessary to provide financial support and attract investments to the measures taken to restore and reconstruct the liberated territories of the Republic of Azerbaijan, as well as to transform it into a region with a sustainable economy and high prosperity, to develop public-private partnership

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<sup>154</sup>[https://apa.az/az/xeber/sosial\\_xeberler/lsgaldan-azad-ediln-razilr-qayidacaq-mcburi-kockunlr-ucun-imtiyazlar-v-guzstlr-nzrd-tutulur-623490](https://apa.az/az/xeber/sosial_xeberler/lsgaldan-azad-ediln-razilr-qayidacaq-mcburi-kockunlr-ucun-imtiyazlar-v-guzstlr-nzrd-tutulur-623490)

<sup>155</sup> State Committee for Refugee and IDP issues of the Republic of Azerbaijan, "Questionnaire to study the views of IDPs on the return to the liberated lands" (available at <http://idp.gov.az/az/form/1>)

<sup>156</sup> Decree of the President of the Republic of Azerbaijan on the establishment of the Karabakh Revival Foundation, a public legal entity (2021) (AZE) (available at <http://www.e-qanun.az/framework/46628>)

in this field.<sup>157</sup> The source of funding is broad and includes donations from natural and legal persons, grants and other legal sources.<sup>158</sup> It can be argued that as the Foundation is established for the purpose of reconstructing, funds will also be used for building houses for IDPs who will return to the territories.

There have been several news concerning the liberated territories, as well. While Coordination Headquarter continues its internal meetings,<sup>159</sup> government authorities also try to work with international actors such as the EU. For instance, in a call with the EU bodies, the Azerbaijani state representatives stressed that the electronic database will be widely used to monitor the migration of citizens during the process of return and reintegration to the liberated territories.<sup>160</sup> It is still unclear how the movement of citizens will be tracked, but the issue of data protection also raises some concerns and any actions taken in this regard must be thoroughly thought. In general, it can be concluded that Azerbaijani government will try to encourage the return via various actions and cooperation. The recently adopted Master Plan of Aghdam city is a perfect example of this tendency. The government will try to populate the area as much as possible and create a green city.<sup>161</sup> According to the Master Plan, 1,750 individual houses and 23,000 apartments will be built in Aghdam. Thus, one third of the city's residents will live in private homes. It is said that the houses in Aghdam will be provided with larger yard areas. Public green spaces will also be established in the city. While the Master Plan itself and actions to be taken seem a nice initiative and are for the interest of general public, IDPs' right to property, restitution and fair compensation should not be forgotten. For greener areas or urbanization of the city, IDPs' HLP rights should not be forsaken and if they want fully to get back their land and houses, then it should be returned to them in full as much as possible. They should be given the exact space of land when they had upon displacement and houses in the village or territory where they had.

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<sup>157</sup> Decree Karabakh 2.1

<sup>158</sup> Decree Karabakh 4

<sup>159</sup> APA, "The next meeting of the Coordination Headquarter was held" (2021) (available at [https://apa.az/az/xeber/daxili\\_siyaset/laqlndirm-Qrargahinin-novbti-iclasi-kecirilib-632107](https://apa.az/az/xeber/daxili_siyaset/laqlndirm-Qrargahinin-novbti-iclasi-kecirilib-632107))

<sup>160</sup> State Committee for Refugee and IDP issues of the Republic of Azerbaijan, News, "EU-Azerbaijan: return of IDPs were also discussed" (2021) (available at <http://idp.gov.az/az/news/1176>)

<sup>161</sup> BBC, "Master Plan of Aghdam: The area and population will increase, pedestrians and bicycles will be preferred" (2021) (available at <https://www.bbc.com/azeri/azerbaijan-57456128>)

### **III. HLP CHALLENGES FOR IDPs: AZERBAIJANI CASE**

This section of the research aims to review the existing national legislation, policies, and practices to identify potential gaps in national legal and/or policy frameworks with a view to strengthening Azerbaijan's position on dealing with IDPs' right to return, right to housing, land, and property.

In the view above, the analysis aims to reveal the gaps and problematic sides of national legal normative acts, including the government's official policies to develop a deeper understanding of how national legal frameworks and policies can be improved to respond to HLP issues for IDPs in line with international standards. In doing so, it analyses how Azerbaijani national legislation and policies protect and regulates the return of IDPs to their former place of residence, including IDPs' right to housing, land, and property under international legal standards. While assessing the compliance the national legislation and policy frameworks with the international standards, this research will also present possible recommendations to strengthen domestic legislation and policies, including practices to secure the rights of IDPs, in particular their right to return, including the right to housing, land, and property.

It also seeks to identify areas where there is a need to do further research and analysis to improve Azerbaijan's response to challenges creating barriers for durable solutions to IDP problems in the country. It is worth noting that there is limited information on to what extent state authorities own state registries and archive materials of the occupied territories, particularly information about housing, land, and property titles of occupied territories recorded before the occupation. Azerbaijan did not adopt any separate normative legal acts dealing with IDPs' right to housing, land, and property (restitution and compensation), including their right to return. These issues remained untouched to a large extent or mentioned in general terms in national legislation. Accordingly, there is also limited domestic legislation directly dealing with the IDPs' right to return, including their right to restitution or compensation.

Therefore, the analysis will cover general normative legal acts, including relevant binding and non-binding international standards. This analysis was conducted in several phases commencing with desktop research and meetings with lawyers with extensive experience on IDP rights in Azerbaijan.

### 3.1. Right to Return

#### a. International framework

Most of the rights and freedoms of internally displaced persons are guaranteed, along with the national legal system of the host country, with law-binding international human rights law (IHRL), international humanitarian law (IHL), and non-binding instrument that mainly drawn from human rights standards. The UN Guiding Principles on Internal Displacement (1998) (hereinafter as *the UN Guiding Principles*) and the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005) (hereinafter *the Pinheiro Principles*) are a set of non-binding international standards, broadly endorsed by international courts and organizations to provide protection and assistance to IDPs.

Under IHL, IDPs have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist (IV Geneva Convention Art. 49 and Customary International Humanitarian Law Rule 132).

Although not legally binding, the UN Guiding Principles and the Pinheiro as an essential tool for dealing with internal displacement are increasingly applied by a number of states, UN agencies, regional organizations such as the Council of Europe, including the European Court of Human Rights (ECtHR) are applying them as standards while dealing with the IDP issues. The UN Security Council, UN General Assembly, and Council of Europe (and its institutions) have on numerous occasions recalled the right of IDPs to return freely to their homes in safety and dignity. The UN Guiding Principles and the Pinheiro Principles have been endorsed by the Council of Europe (CoE) through various instruments. Committee of Ministers of CoE Recommendation Rec(2006)6 on Internally Displaced Persons,<sup>162</sup> which recommended the implementation of the Guiding Principles in the member states,<sup>163</sup> provides that IDPs have “the right to return voluntarily and in dignity to their homes or places of habitual residence or to resettle in another part of the country in accordance with the ECHR.”

The ECtHR has already examined the question of the rights of internally displaced persons under Article 8 (right to home) of the Convention, Article 1 (property rights) of Protocol No. 1 (see, inter alia, *Cyprus v. Turkey*, §§ 162-89, and *Chiragov and Others*, §§ 188-208), and under Article 2 (Freedom of Movement) of Protocol No. 4 (*Georgia v. Russia (II)*, App no. 38263/08 | 21/01/2021, §§ 296-301). The ECtHR’s respective case-law

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<sup>162</sup> Council of Europe, Committee of Ministers, Recommendation (2006)6 On Internally Displaced Persons, 5 April 2006, para. 12; Guiding Principles on Internal Displacement, Principle 29.

<sup>163</sup> Council of Europe, Committee of Ministers, Explanatory Memorandum to the Recommendation (2006)6, cm(2006)36 addendum, 8 March 2006, general considerations.

standards provide the protection of the homes of IDPs and their right to return following forceful displacement.<sup>164</sup>

One of the critical aspects of the right to return laid down in international documents is the idea that it must be voluntary. Voluntary return in safety and dignity to their former places of residence or to resettle in another part of the country is clearly set forth in the *UN Guiding Principles*.<sup>165</sup> This Principle's significance is also noteworthy for affirming the right of IDPs to choose between durable solutions available to them, i.e., return, local integration, or resettlement.

Underscoring that voluntary return in safety and dignity must be based on a free, informed, individual choice and that refugees and displaced persons should be provided with complete, objective, up-to-date and accurate information, including physical, material, and legal safety issues in countries or places of origin.<sup>166</sup> In addition, states are responsible for ensuring that IDPs can find a durable solution to their displacement once the factors that caused their displacement no longer exist.

As the national legal and policy frameworks directly dealing with the process of return of IDPs, including their right to housing, land, and property and being largely affected by the outcome of the possible conflict agreements, the compliance of domestic legislation and policies with international human rights standards is vitally important to secure the rights of IDPs.

### 3.2. Domestic frameworks

#### a. Right To Return: Legal and Policy Frameworks

Article 28 (III) of the Constitution of Azerbaijan and a number of provisions of the national normative legal acts recognize the right of everyone lawfully present within Azerbaijan's territory to move and choose the place of residence freely. However, the primary domestic laws related to internal displacement miss mentioning the IDPs' right to return to their former place of residence.<sup>167</sup> For example, although article 6 of the Law on IDPs guarantees the right of IDPs to return to their former places of residence,

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<sup>164</sup> The ECtHR while explicitly referring to Principles 18 and 28 has stressed that "the authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow the applicants to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country" (ECHR, *Doğan v. Turkey*, Judgment of 29 June 2004, para. 154).

<sup>165</sup> U.N. ESCOR, Hum. Rts. Comm., Guiding Principles on Internal Displacement. U.N. Doc. E/CN.4/1998/53/Add.2 (1998) [hereinafter Guiding Principles]. see Principles 28. (Available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/14513560A4FD818FC1257458004C8D88-Pinheiro\\_Principles.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/14513560A4FD818FC1257458004C8D88-Pinheiro_Principles.pdf))

<sup>166</sup> Guiding Principles on Internal Displacement U.N. Doc. E/CN.4/1998/53/Add2(1998)

<sup>167</sup> The 1999 Law on IDPs (Internally Displaced Persons) and Refugee Status and the 1999 Law on the Social Protection of Internally Displaced Persons and Persons equated to them.



it does not mention the voluntary character of this right. On the contrary, in practice, the state pursued a policy that saw the solution to the problems of IDPs in their total return to their former places of residence, which raises questions about the voluntary nature of the right to return to one's former place of residence.<sup>168</sup> Nevertheless, the government has not adopted or published any legal and/or policy frameworks yet. Any upcoming legal and institutional frameworks must explicitly include the principle of voluntary return in dignity and safety.

Another concern in respective domestic legislation is that the law does not define the IDPs as defined in Article 2 of *the UN Guiding Principles*.<sup>169</sup> It recognizes the person as an IDP who has moved to another place being forced to leave his/her permanent residence within the territory Azerbaijan in connection with *military aggression, natural or manmade disaster*.<sup>170</sup> Thus, there appears to be a gap in the legislation providing a clear definition of the IDPs. As envisaged in *the UN Guiding Principles*, the IDP definition recognizes that persons may be internally displaced after suffering the effects of coercion or in anticipation of such effects. In accordance with this definition, people may be considered IDPs because their routes have been blocked by conflict, landmines, or insecurity or people.

Furthermore, such a limited definition means that people (mostly of Armenian origin) who have been displaced from their homes in Nagorno-Karabakh due to the recent war will not be covered by IDP status within the Azerbaijani national frameworks. However, ensuring the rights of IDPs without discrimination is crucial not only for the restoration of IDPs' rights but also for a comprehensive and lasting peaceful settlement of the conflict. THEREFORE, the IDP definition must be consistent with and should not be narrower than what is provided for in *the UN Guiding Principles*.

Despite the lack of explicit references regarding the right to return voluntarily, in safety and with dignity, or to resettle voluntarily in another part of the country, the trilateral statement of 9-10 November 2020 ceasing the 44-days hostilities between Armenia and Azerbaijan mentions the role of the United Nations High Commissioner for Refugees to control the return process. Although not being a legally binding agreement, the trilateral statement makes the right to return of IDPs a part of the agenda of further political

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<sup>168</sup> Although the Azerbaijani government has developed various programs to improve the socio-economic situation of IDPs, in particular providing housing, providing the opportunity to use utilities on preferential terms and etc., the state policy has promoted the final solution to IDPs' problems in returning to their pre-occupation areas. Azerbaijan: After some 20 years, IDPs still face barriers to self-reliance/ 10 Dekabr 2010. <https://www.internal-displacement.org/sites/default/files/publications/documents/201012-eu-azerbaijan-overview-en.pdf>; [https://www.brookings.edu/wp-content/uploads/2016/06/12\\_idp\\_host\\_communities\\_azerbaijan\\_azeri.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/12_idp_host_communities_azerbaijan_azeri.pdf)

<sup>169</sup> According to the Guiding Principles on Internal Displacement, internally displaced persons (also known as "IDPs") are "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border."

<sup>170</sup> Article 1, the law on the IDP, available (in Azerbaijani) at: <http://www.e-qanun.az/framework/4757>

negotiations on the conflict and involves the UN agency specialized on IDPs and refugees' issues.

## b. National policy

Currently the government is working on Strategic Action Plan which should encompass return and restitution of properties of IDPs. The Committee is also involved in the discussions of Working Groups, so it means that important issues regarding the return will be regulated by the Plan. However, it is concerning that the development still continues, there is no plan yet despite the war is over almost a year and the public is not informed. The government should create and publish a plan as soon as possible and involve communities and civil society into the process.

The plans to ensure the right of IDPs to return were always on the agenda of the Azerbaijani authorities in the past. Back in 2009, the government prepared a framework for the "Great Return". In 2009, the government of Azerbaijan has reportedly adopted an action plan called "the Great Return Plan" relating to planning, organization, and implementation of return of IDPs with the support of UNHCR.<sup>171</sup> However, the plan has never been published and discussed with the public. Instead, the government has decided to develop a new post-war return plan after de-occupation of the territories. On 2 February 2021, the President signed an order approving *Azerbaijan 2030: National Priorities for Socio-Economic Development* which sets a task for the government to develop a plan on the "Great Return to the liberated territories."<sup>172</sup> Following this order, on 28 February 2021, the Cabinet of Ministers signed an Order (No. 161)<sup>173</sup> establishing the Sub-Working Group on Sustainable Settlement and Reintegration of Economic Activity where 7 ministries, 3 state committees and 1 state agency included. The sub-working group is tasked to prepare a strategy which will apparently reflect the official policy of the government on IDPs' return to their former place of residence. The sub-working group has not yet submitted any documents for public discussion.

In January 2020, the government promoted the idea that IDPs should be surveyed on their desire to return to their lands.<sup>174</sup> Launched on February 22, 2021, 65,000 people took part in the survey until 23 April 2021.<sup>175</sup> However, the government still not decided

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<sup>171</sup> Azertag (official state information agency): Article titled: IDP Great Return Program Prepared, 04.01.2010. Available (in English) at: [https://azertag.az/en/xeber/IDP\\_GREAT\\_RETURN\\_PROGRAM\\_PREPARED-587751](https://azertag.az/en/xeber/IDP_GREAT_RETURN_PROGRAM_PREPARED-587751)

<sup>172</sup> Order of the President of the Republic of Azerbaijan on approval of "Azerbaijan 2030: National Priorities for Socio-Economic Development", 02 February 2021, available (in English) at: <https://en.president.az/articles/50474>

<sup>173</sup> Order No. 161 establishing sub-working groups to prepare the "Strategy for Socio-Economic Development for 2021-2025". <https://nk.gov.az/az/document/5178/>

<sup>174</sup> Turan News Agency: The return of internally displaced persons should be stimulated. 2021 January 14 - <https://www.turan.az/ext/news/2021/1/free/Interview/en/367.htm/001>

<sup>175</sup> Launched on February 22 2021, this online survey is conducted by a special Research group created at ADA University and consisting of experts from various scientific and educational institutions on the basis of state order. 65,000 people took part in the survey until 23 April 2021, and the number of views on the survey page exceeded 400,000. Apa news agency:

under what concrete conditions IDPs will be returned to their original habitats. Thus, IDPs who are well integrated to their current place of residence, in most cases in big cities with good infrastructure and job opportunities are unlikely to return to their own habitats permanently leaving their place of residence, in particular houses given under the state support to IDPs. On April 13, 2021, the president noted “a phased returned” and stressed that the return will start from the villages close to the infrastructure.<sup>176</sup>

By all accounts there is significant destruction of public infrastructure and private property in the occupied territories, including landmine risks<sup>177</sup> and occasional skirmishes in *frontline* and state borders<sup>178</sup> that excludes the proper and immediate return and requires a significant time and resources. Upon return or relocation, IDPs should still receive protection from continued threats of violence and protection from landmines. Furthermore, the government should take appropriate measures to establish favorable conditions for IDPs to ensure their right to return voluntarily, in safety and with dignity as echoed by Guiding Principle 28(1) of the Guiding Principles on Internal Displacement.

In addition, another important point related to the return is the participation of IDPs in the process of drafting and implementing this process, as well as consultations with them. Although both domestic law and international standards provides the rules to ensure the participation of IDPs in the planning and management of their return or resettlement and reintegration, in practice, IDPs are not consulted properly and do not participate in this process.

The report of UN Special Rapporteur on the human rights of internally displaced persons on his follow-up mission to Azerbaijan (19–24 May 2014) called the Government of Azerbaijan to expand and broaden consultations to ensure that all IDPs, in particular women, are better informed, consulted, and involved in the development and implementation of resettlement plans.<sup>179</sup> The Special Rapporteur noted that the findings

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Online survey on IDPs’ return to Karabakh ends. 23 April 2021. <https://apa.az/en/xeber/social-news/Online-survey-on-IDPs-return-to-Karabakh-ends-347568>

<sup>176</sup> Nocomment.az: The President announced the date of the return of IDPs.13 April 2021- <https://nocomment.az/prezident-mecburi-kockunlerin-geri-qaytarilmasi-ile-bagli-tarixi-aciqladi/>

<sup>177</sup> Official records indicate that 20 Azerbaijani citizens have been killed due to landmines between 10 November 2020 - 4 April 2021. BBC News Azerbaijan, Ministry of Foreign Affairs/Azerbaijan: to date, 20 Azerbaijani citizens have been killed and 85 injured by landmines in Karabakh", available (in Azerbaijani) at: <https://www.bbc.com/azeri/azerbaijan-56632257>

<sup>178</sup> Azerbaijan Defense Ministry: "The positions of the Azerbaijan Army were subjected to fire along the entire length of the state border" (17 July 2021). Available (in English) at: <https://mod.gov.az/en/news/the-positions-of-the-azerbaijan-army-were-subjected-to-fire-along-the-entire-length-of-the-state-border-36824.html>

Azerbaijan Defense Ministry: "Armenia bears responsibility for aggravating the situation along the entire length of the state border between the two countries" (16 July 2021). Available (in English) at: <https://mod.gov.az/en/news/azerbaijan-defense-ministry-armenia-bears-responsibility-for-aggravating-the-situation-along-the-entire-length-of-t-36818.html>

Azerbaijan Defense Ministry: "The positions of the Azerbaijan Army were subjected to fire in the direction of Kalbajar region" (15 July 2021). Available (in English) at: <https://mod.gov.az/en/news/the-positions-of-the-azerbaijan-army-were-subjected-to-fire-in-the-direction-of-kalbajar-region-36809.html>

<sup>179</sup> Report (A/HRC/29/34/Add.1) of the Special Rapporteur on the human rights of internally displaced persons on his follow-up mission to Azerbaijan (19–24 May 2014), para., 24.

of the recent UNHCR participatory assessment<sup>180</sup> indicate that both the IDPs who had moved to new settlements and those who were waiting to be moved stated that they had not been consulted about their needs and wishes in the process.<sup>181</sup> However, the preparation process of the recently adopted Master Plan of Aghdam city in May 2021<sup>182</sup> apparently lacked such public consultation with public, including IDPs. However, the Urban Planning and Construction Code of Azerbaijan provides that state authorities are obliged to provide the public with detailed information on all stages and content of zone planning, as well as important construction intentions for the population.<sup>183</sup> The same Code further indicates that zone planning documents must be open to the public.<sup>184</sup> Article 26 of the Code provides that authorities must hold public discussions and establish mechanisms to review requests and complaints related to zone planning. And article 32 of the Code envisages that master plans should be prepared to take into account the objections and suggestions of the public.

There are several reasons that participatory and community based approach should be an essential part of the any response plan to be adopted by the government. First, some IDPs live on public lands and private houses with a threat of forced evictions by state authorities or private owners. There is also fact that houses and lands in the deoccupied territories have collapsed as a result of prolonged forced displacement and it has become very difficult to determine their boundaries. Moreover, IDPs must be given opportunity to decide on the best and voluntarily chosen form of remedy (restitution, compensation, housing assistance, land distribution and etc). For these reasons, the state should pay more attention to developing a participatory and community-based policy plan. The exclusion of IDPs from this process have a risks for the elimination of the negative consequences of the conflict and the restoration of justice. Therefore government must involve IDPs directly to the process of development and implementation possible return and restitution policies. The community participatory approach should be an essential part of the any strategy, especially in the context where the return and restitution program are required to be applied without any discrimination based on ethnicity.

As emphasized by UN Special Rapporteur, the government of Azerbaijan should hold genuine consultations with IDPs to ensure that all IDPs are better informed, consulted, and involved in the development and implementation of return and resettlement plans, including city planning processes. Furthermore, the government should establish

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<sup>180</sup> UNHCR, “Being an IDP in Azerbaijan”, report from a participatory assessment with IDPs in Azerbaijan (Baku, June 2013), pp. 16–17.

<sup>181</sup> Report (A/HRC/29/34/Add.1) Ibid, para., 25

<sup>182</sup> Turan Information Agency, “Agdam City Master Plan approved”, available (in English) at: [http://turan.az/ext/news/2021/5/free/politics\\_news/en/4511.htm](http://turan.az/ext/news/2021/5/free/politics_news/en/4511.htm)

<sup>183</sup> Article 13 of the Urban Planning and Construction Code, available (in Azerbaijani) at: <http://e-qanun.az/framework/46958>

<sup>184</sup> Ibid, article 20.4

effective and ad-hoc mechanisms for the meaningful involvement of IDPs in processes that affect them. In particular, it is critically important for the government to seek greater collaboration with land and house owners with the view that all infrastructure projects have direct impacts on their right to housing, land, and property.

### 3.3. Housing, Land and Property rights of IDPs

Although the national legislation guarantees the right of IDPs to return to their former places of residence, it does not set out clear rules on a number of conditions and solutions to the complex situation that they may face upon their return. While *the Law on IDPs* provides a guarantee on "the right to return to previous places of residence" for the IDPs, it does not offer any response in case of IDPs, upon their return, will find their former places of residences have been destroyed or lands are mined.

Another potential question is that the legal regime for housing, land, and property rights before evictions of IDPs has changed since the displacement has occurred. Thus, IDPs' houses, lands, and property rights should be qualified under completely new legal frameworks.

In particular, after the forced displacement of IDPs, various land, housing, and property rights reforms were implemented in Azerbaijan. However, IDPs stayed out of the scope of these reforms and subsequently could not benefit from them which will be discussed in detail below. Although authorities should establish appropriate mechanisms to apply these reforms and rules without discrimination in the post-occupation territories.

#### *a. Right to housing*

Article 43 (II) of the Azerbaijan Constitution provides that the state promotes construction of residential premises and takes special measures for realization of right to housing. Under Article 11(1) of the International Convention on Economic, Social and Cultural Rights Azerbaijan has undertaken to ensure 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'. Furthermore, as noted above, the ECtHR has also found that the inability of displaced persons, in the context of a conflict, to return to their homes amounted to an "interference" with the exercise of their rights under Article 8 (*Chiragov and Others v. Armenia* [GC], § 207; *Sargsyan v. Azerbaijan* [GC], § 260).

According to the official statistics, 115 new settlements and multi-store residential complexes have been built for IDPs and refugees in more than 30 cities and regions. In addition, 65,000 IDP and refugee families, or about 315,000 people, have been



temporarily provided with new apartments in those settlements.<sup>185</sup> Under articles 91 and 96 of the Housing Code, IDPs are provided with the residential areas considered the special purpose housing fund intended for the temporary use for IDPs and refugees. Accordingly, it is prohibited to IDPs to sell, mortgage, rent, lease these special purpose housing areas.<sup>186</sup>

Article 2.11 of Resolution no 65. of the Cabinet of Ministers on approval of the “Rules for providing housing for the temporary accommodation of IDPs” dated 24 February 2017 envisages that IDPs are not provided with accommodation if IDPs who were registered at the resettlement facility at the time of provision of temporary accommodation but did not actually live there.<sup>187</sup> In its participatory assessment, UNHCR noted that many IDPs reported that they felt that their freedom of movement was restricted, in particular because access to assistance and free housing tied them to their registered residence and thus hindered them from moving to search for employment elsewhere. Under principle 14 of the Guiding Principles on Internal Displacement, every IDP has the right to liberty of movement and freedom to choose his or her residence. The registration and assistance of IDPs should be guided and informed by that principle rather than restricting it.<sup>188</sup>

In Azerbaijan, recent developments in housing and construction legislation<sup>189</sup> allowing public-private partnership in housing construction would create additional incentives, if applied properly in de-occupied territories, improve the housing conditions for IDPs. Engagement of the local or international actors, including local businesses, is key to providing IDPs access to a broader choice of goods, finance, employment, and investment opportunities. It is also crucial to avoid residential segregation tendencies in housing solutions for IDPs.<sup>190</sup>

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<sup>185</sup> Official interview of the State Committee for Affairs of Refugees and Internally Displaced Persons to the local media. Article titled: “What will be the fate of the houses given to IDPs? Available (in Azerbaijani) at:”<https://nocomment.az/mecburi-kockunlere-verilen-evlerin-taleyi-nece-olacaq/>

<sup>186</sup> The Housing Code, available (in Azerbaijani) at: <http://e-qanun.az/framework/46955>

<sup>187</sup> Resolution no 65. of the Cabinet of Ministers on approval of the “Rules for providing housing for the temporary accommodation of IDPs” dated 24 February 2017, available (in Azerbaijani) at: <http://e-qanun.az/framework/34945>

<sup>188</sup> Report (A/HRC/29/34/Add.1) of the Special Rapporteur on the human rights of internally displaced persons on his follow-up mission to Azerbaijan (19–24 May 2014), para., 49. [https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_29\\_34\\_Add\\_1\\_en.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_29_34_Add_1_en.pdf)

<sup>189</sup> The model was first introduced in 2016 through the Law on the implementation of special Financing for Investment Projects in connection with Construction and Infrastructure Facilities, adopted on 15 March 2016 (“BOT Law”). Available (in Azerbaijani) at: <http://www.e-qanun.az/framework/32612>

<sup>190</sup> New settlements for the internally displaced have been constructed in geographically remote, economically unviable and otherwise unsuitable locations, leading to isolation and segregation. In its report, Azerbaijan: Displaced then discriminated against – the plight of the internally displaced population, Amnesty International outlines a series of practices which in effect discriminate against and segregate the displaced population. Available (in English) at: <https://www.amnesty.org/download/Documents/64000/eur550122007en.pdf>



## b. Right to Land

Under the relevant laws of the Azerbaijan SSR, which were in force before the displacement, IDPs could own houses as personal property.<sup>191</sup> Agrarian and land reforms of Azerbaijan changed the pre-war soviet forms of property and recognized the property rights of individuals on land.<sup>192</sup> Under the Soviet legal system, citizens had a right to own residential houses, but there was no private ownership of land, which instead was considered State property.<sup>193</sup>

The law *On Land Reforms* of July 16, 1996, created a foundation for preceding reforms.<sup>194</sup> According to Law on Land Reform, the lands are transferred gratuitously to each citizen who has the right to receive a land share.<sup>195</sup> While non-IDPs enjoyed this Law, IDPs didn't get such a privilege.<sup>196</sup> In transitional provisions of the Law, it is enshrined that after the liberation of occupied territories, the reforms will be held in a similar way there by this Law, and lands will be transferred to private property of IDPs.<sup>197</sup> The Law on land reforms also provides that reforms in the liberated lands and economic recovery in those territories are carried out based on a state program.<sup>198</sup> Furthermore, the Law on land reforms also transferred the land plots under the individual houses, backyards to the ownership of legal users of those houses and backyards for free of charge.<sup>199</sup>

Following Azerbaijan's return of control over the territories, the land reforms, which were not implemented in relation to IDPs becomes actual and raise the question of whether IDPs as a subjects of land reforms will be treated without discrimination. Land reform laws and the Constitution's provisions on equality require that land reforms must be applied to IDPs without discrimination.

As the State Agrarian Reform Commissions (SARC) was the main responsible agency together with its representative in each rayon, the Rayon Agrarian Reform Commission (RARC) to realize land reforms<sup>200</sup>, the authorities are expected to organize works State

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<sup>191</sup> Moreover, land could be allotted to citizens for an indefinite period for purposes such as farming and housing. Pursuant to Article 13 of the 1978 Constitution and Article 10.3 of the 1983 Housing Code, citizens could own residential houses as personal property. Personal property and the right to inherit it were protected by the State. In contrast, all land was owned by the State. Plots of land could be allocated to citizens for specific purposes such as farming and the construction of individual housing. In that case, the citizen had a "right of use" in respect of the land. This follows again from Article 13 of the 1978 Constitution and Article 4 of the Land Code. The "right of use", though it obliged the beneficiary to use the land for the purposes for which it had been allocated, was protected by law

<sup>192</sup> However, since the 1991 Law on the property and the 1992 Land Code provided a possibility to transfer land already allotted to citizens into their private ownership, detailed rules on the privatization of land, including individual houses allotted to citizens, were introduced by the 1996 Law on land reform.

<sup>193</sup> Article 10.3 of the Housing Code provided for the ownership of houses, and the Land Code, notably Articles 4, 25, 27 and 28, laid down the rules and procedures for the allocation of land to individuals for their use. Consequently, the houses that the IDPS inhabited in the occupied (now de-occupied) territories were part of their personal property, whereas they only had a "right of use" of the plots of land on which these houses stood (see: Case of Chiragov and Others v. Armenia (13216/05), para., 196, available at: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-155353%22%7D>)

<sup>194</sup> The Law on land reforms, available (in Azerbaijani) at: <http://e-qanun.az/framework/4207>

<sup>195</sup> Ibid, article 14

<sup>196</sup> Human Rights Situation of IDPs in Azerbaijan, November - 2018. Human Rights Club. Available (in English) at: <https://www.humanrightsclub.net/en/news/2019/human-rights-situation-of-internally-displaced-persons-in-azerbaijan/>

<sup>197</sup> Ibid, article 24

<sup>198</sup> Ibid, article 24.2

<sup>199</sup> The Law on land reforms, article 9

<sup>200</sup> The Presidential decree of March 2, 1995, No. 155-IQ establishing a State Agrarian Reform Commissions, article 20

Agrarian Commissions to eliminate the inequality concerning to transferring of land plots to for IDPs in de-occupied territories. Any possible government pursued policies and legal frameworks should mention the principle of non-discrimination as laid down in Articles 3 and 9 of the Pinheiro Principles, in Articles 3 and 18 UN Guiding Principles on Internal Displacement.

In addition, when discussing compensation or restitution for the destructed houses of IDPs, authorities should ensure that the lands under the houses are taken into account as property since such lands were allocated to homeowners according to land reform laws.

### c. Right to property

Although domestic legislation<sup>201</sup>, including the international law<sup>202</sup> recognizes the right to property, there are also considerable gaps in Azerbaijani legislation concerning restitution of property and lack of explicit mechanisms for identifying and compensation of demolished/lost property. Thus, the government has not enacted any laws in respect of destructed and lost property in the occupied territories. The principles and the conditions of property compensation and restitution have therefore yet to be established, and thus IDPs are currently unable to access effective remedies in relation to their right to property that has been arbitrarily occupied, damaged or destroyed. The Civil Code of Azerbaijan provides the right to compensation for property rights under certain conditions (expropriation/nationalization) as there are mechanisms of state funds allocation in the laws.<sup>203</sup> However, there are not explicit norms under the domestic legislation to qualify the deprivation of property as a result of occupation or military actions.

Another concern in regard to the property rights of IDPs is that the Article 14 of the *Law on IDPs* stipulates that the status of IDP will be ceased if he/she is provided with the

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<sup>201</sup> Article 29 of the Constitution guarantees that no one will be dispossessed of their property without their consent or a court decision and that alienation of private property for state needs will be allowed after a payment of a fair compensation to an owner only. Constitution of the Republic of Azerbaijan, Article 13 and 29, The Civil Code, Article 157.

<sup>202</sup> The right property is explicitly expressed in numerous law-binding human rights treaties which Azerbaijan is party. The property rights are also enshrined international humanitarian law conventions, for example, Article 53 of the Geneva IV protects property from destruction under occupation. Further, the right to property is explicitly expressed in the Hague Convention IV Articles 23, 46, and 53, which means that individuals' right to property is protected to a certain extent in wartime and under occupation. The right to property enshrined in Article 1 of Protocol 1 of the European Convention of Human Rights signed by Azerbaijan and went into effect in Azerbaijan on April 15, 2002. Specifically, the right to property of IDPs are mentioned in the both standard-setting UN principles – the *UN Guiding Principles* and the *Pinheiro Principles* and in numerous regional instruments. The Council of Europe Committee of Ministers, Recommendation Rec(2006)6 on internally displaced persons; the Parliamentary Assembly of the Council of Europe Recommendation 1877 (2009) "Europe's forgotten people: protecting the human rights of long-term displaced persons"; The Parliamentary Assembly of the Council of Europe Resolution 1708 (2010) "Solving property issues of refugees and internally displaced persons Resolution 1708 (2010)".

<sup>203</sup> The Law on "Acquisition of Lands for State Needs" (of April 20, 2010 No. 987-IIIQ) specifically address matters related to involuntary resettlement (IR), including the process and institutional arrangement for land acquisition, compensation and valuation, consultation requirements, entitlements of various categories of displaced persons and grievance mechanism. The law considers various categories of displaced persons, including those without state registration, renters, non-formal long-term users of land, and persons who have no legal rights on the land that they live in. The law entitles persons who have no legal rights on the land to resettlement assistance and compensation for their non-land assets. It includes provision of compensation for loss of business/income, transition allowance and transportation support, and compensation for loss assets based on replacement cost. Available (in Azeri) at: <http://e-qanun.az/framework/19613>

residential space in a *determined size* in the region of his/her former place of residence or provided with the residential space to a *defined degree* with the special decision of the government. However, the Law does not specify in which *determined size* or *degree* of provision of the residential area for the IDPs will be considered as an appropriate for ceasing their IDP status without further compensation of their lost or destructed property.

Both basic laws on IDPs – the *Law on IDPs* and *Law on social protection of IDPs* do not provide any restitution or compensation for the right to property. Instead, domestic legislation provides residential areas and lands free of charge for temporary use to IDPs.<sup>204</sup> Housing arrangements for IDPs in the new settlements are of a temporary nature and housing is provided on a free cost basis as IDPs are treated as “guests” pending implementation of the “Great Return” master plan. Those measures are no doubt welcome and have gone a long way to improve the well-being of IDPs. While IDPs enjoy privileged housing, they have no rights of ownership because the voluntary return to their original homes or places of habitual residence or settlement in different parts of the country is the durable solution predicated.<sup>205</sup>

Furthermore, IDPs sometimes face difficulty obtaining rights of ownership in residential property, land and businesses due to their temporary residence status. Credible reports suggests that IDPs often unable to acquire land and housing allocated for their temporary use in government-sponsored settlements. Financial and administrative barriers to acquiring property limit long-term possibilities for participation in social and economic life<sup>206</sup> and their right to resettlement within the territory of the country. This is most prevalent during state backed forced evictions in big cities of Azerbaijan due to urban planning projects.<sup>207</sup>

Although there are mechanisms for compulsory purchase of property for the state needs and compensation to those deprived of their property, it is not applied to IDPs, instead, they are forcibly evicted to the state-owned residential areas where they are being provided with temporary housing. On 21 June 2018, the ECtHR communicated the *case of Ramiz MAMMADOV and Others against Azerbaijan* (Application no. 57978/14) where 22 applicants are IDPs, who settled in squatter houses built by them in Baku, complained that the alleged unlawful expropriation and demolition of the applicants’ houses by the authorities was not resulted in compensation, instead the alleged discriminatory treatment due to their status as IDPs, whereas other residents, whose squatter houses had been demolished in the same area and they had been paid

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<sup>204</sup> Articles 4, 5 of the Law On Social Protection of Internally Displaced Persons and Persons Equated to Them (No. 669-IQ). Available (in Azerbaijani) at: <http://www.e-qanun.az/framework/4758> ; Article 17 of the Law On the status of refugees and IDPs (Internally Displaced Persons) (Nº 668-IQ). Available (in Azerbaijani) at: <http://www.e-qanun.az/framework/4757>

<sup>205</sup> Report (A/HRC/29/34/Add.1) of the Special Rapporteur on the human rights of internally displaced persons on his follow-up mission to Azerbaijan (19–24 May 2014), para., 24. [https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_29\\_34\\_Add\\_1\\_en.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_29_34_Add_1_en.pdf)

<sup>206</sup> UNHCR. Azerbaijan: Analysis of Gaps in the Protection of Internally Displaced Persons (IDPs), October 2009, page 9. Available (in English) at: <https://www.unhcr.org/4bd7edbd9.pdf>

<sup>207</sup> In 2014, two IDP families refused to leave their houses in Baku in return of temporary resettlement in state-owned residential areas without any compensation for their demolished houses in Baku.”(See [http://propertyrights.az/site/assets/files/1360/property\\_rights\\_azerbaijan\\_2016.pdf](http://propertyrights.az/site/assets/files/1360/property_rights_azerbaijan_2016.pdf) )

monetary compensation. Alternatively, IDPs deprived their property, and they were presented temporary house intended for IDPs located outside of Baku city.<sup>208</sup>

This situation prevents IDPs to resettle voluntarily in another part of the country as set down in international standards and coerce them in a disproportionate manner to return to their former homes, lands, or places of habitual residence (see: ECHR, *Doğan v. Turkey*, Judgment of 29 June 2004, para. 154, the Guiding Principles on IDPs, Principle 15 (d), 28, 29; the Pinheiro Principles, Principles 9, 10.3).

Another concern of the domestic legislation is that it provides IDPs with housing and land only on a temporary basis without any proper restitution or compensation mechanisms for their destructed/lost property. As the international standards acknowledge a right to restitution for displaced persons or at least mechanisms for compensation for their violated rights<sup>209</sup>, Azerbaijan needs to amend its national legal frameworks, in particular law on social protection of IDPs to end the discriminatory application of social protection legislation.

Thus, the existing registration system of IDPs in social housing funds in the post-conflict situation creates legal barriers for their HLP rights. As the registration as an IDP is a precondition for eligibility for social assistance, including free-of-charge house and land allocation, on contrary, IDPs lose their IDP registration for the purpose of social protection measures in the case of when they have a permanent place of residence in a separate housing area they possess. This is legally problematic because domestic legislation recognizes the IDPs' right to HLPs within the frameworks of state social support schemes but not as their rights. In such a context, many IDPs are afraid of losing their current better living conditions when they decide to return to their former habitats with scarce conditions.

#### *d. The rights of tenants and other non-owners*

Provisions related to the protection of rights of non-owners are, in a general term, mentioned in the Civil Code of Azerbaijan. As laid down in Article 158 of the Civil Code, right of non-owners, including tenants and other non-owners' rights are protected by law. The Code also envisages that the property rights (right to use, right to possession) of a non-owner are protected from being violated by any person, including the owner.<sup>210</sup>

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<sup>208</sup> Application no. 57978/14, Ramiz MAMMADOV and Others against Azerbaijan lodged on 15 August 2014, <https://hudoc.echr.coe.int/eng#%7B%22tabview%22%3A%22document%22%2C%22itemid%22%3A%22001-184715%22%7D>

<sup>209</sup> See: Principle 29 of the UN Guiding Principle, Principle 2, 4, 12, 21 of the Pinheiro Principles, para., 8 of the Council of Europe Committee of Ministers, Recommendation Rec(2006)6 on internally displaced persons, para., 15.3.6 of the Parliamentary Assembly of the Council of Europe Recommendation 1877 (2009) "Europe's forgotten people: protecting the human rights of long-term displaced persons", para., 3, 7 and 10 of the Parliamentary Assembly of the Council of Europe Resolution 1708 (2010) "Solving property issues of refugees and internally displaced persons Resolution 1708 (2010)".

<sup>210</sup> Article 158, Civil Code available (in Azerbaijani) at: <http://e-qanun.az/framework/46944>

Article 16 of the *Pinheiro Principles* provides that states should ensure that the rights of tenants, social-occupancy rights holders and other legitimate occupants or users of housing, land and property are recognized within restitution programmes. Parliamentary Assembly of Council Europe's Recommendation 1877 (2009) to the member states to restitute property or occupancy/tenancy rights and/or provide prompt, effective and fair compensation where restitution is not possible, and repair or rebuild restituted houses or construct alternative adequate accommodation (15.3.6.).

However, there are certain concerns in securing the rights of tenants and other non-owner users of houses and lands before forced displacement. The Presidential order dated on 13 January 2015 on "the list of documents confirming the acquisition of rights on real estate objects obtained and created before the entry into force of the Law of the Republic of Azerbaijan "On the State Register of Real Estate",<sup>211</sup> provides the list of documents adopted in accordance with the legislation in force during the period when the Republic of Azerbaijan was a part of the Union of Soviet Socialist Republics and during its independence that needed to confirm the rights of tenants and other non-owner users to lands, houses, and yards.

However, during the occupation and forced displacement of IDPs, at least 7000 states buildings, including 12 state archives<sup>212</sup>, notarial offices, as well as other offices of public institutions where databases of documents related to the registration of real estate, were destroyed, or lost.<sup>213</sup> Furthermore, many people have not been able to obtain documents proving their property or other rights during the forced relocation. According to a survey conducted by the Center for Social Research, only half (51.1%) of IDPs have kept the documents of their homes in the occupied territories. 48.9% did not keep such documents.<sup>214</sup> Domestic legislation, including case law of the domestic courts do not provide any separate mechanisms for identification of property and other non-owner rights in the state registries of real estate, as well as the determination of documents confirming their rights to lands or houses. Therefore, the government should take all appropriate administrative, legislative and judicial measures to support and facilitate the processes of verification, compensation and restitution for owners, including non-owners. In doing so, it is necessary to provide more flexible legislation that allows IDPs to fully exercise their right to HLP irrespective the possessory rights and include non-owners to the any possible compensation or restitution programmes.

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<sup>211</sup> The Presidential Order on 13 January 2015, available (in Azerbaijani) at: <http://www.e-qanun.az/framework/29097>

<sup>212</sup> Ministry of Foreign Affairs, report on Conflict, available (in Azerbaijani) at: <https://www.justice.gov.az/categories/22>

<sup>213</sup> Collection of official information about Karabakh, available at governmental portal, president.az (available in Azerbaijani) at: <https://static.president.az/media/W1siZiIsIjIwMjAvMDkvMDEvNTZtc9kM296MV9RYXJhYmFnFnXzIwMjBfQVpFLnBkZiJdXQ?sha=28b54e9a4dacd33f>

<sup>214</sup> The Center for Social Research conducted a telephone survey of 464 IDP families living in the Gobu settlement. The survey was conducted from 9 to 13 October 2020. <https://stm.az/en/news/563/qarabaga-qayidis-sorgu-hesabata-dair-press-reiz>



#### e. Compensation or Restitution Frameworks/Procedure

International human rights law, including the respective case law of the ECtHR which Azerbaijan bounded indicate that internally displaced persons are entitled to the enjoyment of their property and possessions in accordance with human rights law. In particular, IDPs have the right to repossess the property left behind following their displacement. If internally displaced persons are deprived of their property, such deprivation should give rise to adequate compensation (*Chiragov and Others v. Armenia* [Case No.13216/05]; *Sargsyan v. Azerbaijan* [Case No. 40167/07.]).

The UN Guiding Principles, the Pinheiro Principles, and other regional human rights instruments provide the formal institutions and claims procedure norms that are necessary to realize property restitution as a right of displaced persons. Several key standards on forced displacement such as *the UN Guiding Principles*<sup>215</sup>, *the Pinheiro Principles*<sup>216</sup>, and *the CoE/PACE Resolution 1708 (2010)*<sup>217</sup> consider restitution as a preferred remedy to dispossession and displacement. Compensation is only envisaged when restitution is impossible or when it is the choice of the displaced. Authorities have a responsibility to assist the displaced in recovering their property.

Domestic legislation provides guarantees for the protection of rights to housing<sup>218</sup> land<sup>219</sup> and property.<sup>220</sup> However, the analysis of the domestic legislation reveals that further laws and policies must be enacted specifically to address the compensation and restitution mechanisms for IDPs. Laws also should clarify the powers and responsibilities of the government agencies dealing with property restitution and compensation. Consequently, as no political solution (peace agreement) to the conflict had been reached, there are no effective remedies possible at domestic level in practice to provide redress to IDPs.<sup>221</sup>

Securing HLP rights for IDPs is a key component of finding durable solutions to displacement. Parliamentary Assembly of Council Europe' Resolution 1708 (2010) on "Solving property issues of refugees and internally displaced persons" states that "the restitution of property – that is, the restoration of rights and physical possession in favor

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<sup>215</sup> The Un Guiding Principle, Principle 29.2

<sup>216</sup> The Pinheiro Principle, Preamble and Principle 2.4

<sup>217</sup> CoE/PACE Resolution 1708 (2010) "Solving property issues of refugees and internally displaced persons", para., 4.

<sup>218</sup> Article 9 of the Housing Code provides the right to restoration of the situation that existed before the violation of the right to housing and prevention of actions that violate or threaten to violate this right.

<sup>219</sup> Article 84 of the Land Code provides that the rights of landowners, users, and lessees shall be protected by law, and violated rights of landowners, users and lessees shall be restored in accordance with the legislation and the damage caused to them as a result of the violation of the rights shall be compensated in full.

<sup>220</sup> Article 157 of the Civil Code

<sup>221</sup> On 2 December 2019 the Armenian authorities sent the Committee a communication (*DH-DD(2019)1437*) in which they pointed out that the case relates to an ongoing conflict situation, where the parties have not reached a peace agreement. In these circumstances, complex and interconnected issues were hindering the execution of the *Chiragov* judgment. In particular, the security situation had an impact on the prospects of setting up the property mechanism called for by the Court. The Court judgment noted that that there are more than a thousand similar cases pending at the Court (against both States) arising from the Nagorno-Karabakh conflict (*Sargsyan v Azerbaijan* (Merits), para. 216).



of displaced former residents – or compensation, are forms of redress necessary for restoring the rights of the individual and the rule of law."

On 29 October 2019, the NGO European Human Rights Advocacy Centre (EHRAC) submitted a communication under Rule 9.2 (DH-DD(2019)1357), emphasizing the urgent need to make progress in the implementation of both judgments, notably in the context of the establishment of a property compensation mechanism.<sup>222</sup> In its submission, the EHRAC with reference to relevant international standards (the Pinheiro and Poulsen Principles and the Guiding Principles on Internal Displacement ) provides detailed recommendations on establishing a property claims mechanism, which should be easily accessible and provide procedures operating with flexible evidentiary standards, allowing the applicant and others in his situation to have their property rights restored and to obtain compensation for the loss of their enjoyment (see paras., 4-46).

While there are sufficient norms protecting property rights at national level, there are some issues that needs to be addressed. One of the major ones is how the IDPs not wanting to return should be compensated. Ideally, they should be presented with an option to choose between the houses they have been given in other areas and the ones that should be built in Karabakh as the restitution and compensation should be in full and effective. Law should also include the mechanism for dealing with the claims and documentation process in detail. Another important point is related to how children of IDPs who are adults now and have their own families should be treated. As they consist separate family unit, they should be given a separate house according to the number of the family members. The question arises what should happen if those young families do not want to go back and they did not have any property in Karabakh unlike their parents. The human rights approach demands that in any case, those families are given houses as they can not be left without an adequate living standard, and that they could have built their own houses if there was no occupation. Last but not least, upon the provision of houses number and gender of children should be taken into consideration and favourably, girls are given separate rooms. These are the most essential points that needs to be included in the law.

Furthermore, the government is also needed to handle with the high of IDP's claims which has the potential to overwhelm the institution that will be in charge of addressing such claims. Thus the government should introduce special mechanisms, in particular institution with the adequate mandate and resources to handle with the high number of claims and conflicts properly and within a reasonable time-frame.

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<sup>222</sup> See: 1362nd meeting (December 2019) of the Committee of Ministers of the Council of Europe - Rule 9.2 - Communication from a NGO (29/10/2019) in the cases of Chiragov and others v. Armenia (Application No. 13216/05) and Sargsyan group v. Azerbaijan (Application No. 40167/06) , available (in English) at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=090000168098de09](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168098de09)

Return and restitution process can be a long and resource-demanding one. Therefore, there is a need for monitoring mechanism in order to provide accountability and transparency. Such a mechanism should contain the members of state bodies, civil society members, experts, community members and international organisations and NGOs who have expertise in the field. The status, functions, rights and duties monitoring body must be established by body, and it must have independent status reporting only to the Parliament of the Republic of Azerbaijan. Involvement of local and international civil society members is important as they can not only bring their expertise, but also coordinate with state entities on how the process should be and is conducted regarding the return and restitution. Importantly, the recommendations and reports by the mechanism must be given due

## Conclusion

In summary, the challenges faced by Internally Displaced Persons (IDPs) in Azerbaijan concerning their housing, land, and property (HLP) rights are substantial and intricate. Following the post-44-day war period, the region has been left in a state of utter devastation, characterized by being the most mine-contaminated area globally, with extensive destruction of infrastructure and homes. The presence of armed groups and the lingering issues surrounding the international border's delimitation and demarcation further complicate the secure return of IDPs to their residences.

It is essential to acknowledge that the return of IDPs to their original places of residence transpired through the crucible of war, rather than peaceful processes. This reality has added layers of complexity to the pursuit of sustainable peace in the region and has contributed to negative sentiments among Azerbaijani IDPs regarding peaceful coexistence. Rebuilding trust and fostering peaceful cohabitation between communities will necessitate substantial commitment from peace-building entities in both Armenia and Azerbaijan.

Over the past three decades, international norms and standards have been formulated to safeguard the rights of IDPs. The UN Guiding Principles and Pinheiro Principles have laid the groundwork for regional and domestic authorities to establish legislative acts and regulations. Azerbaijan has made strides in incorporating certain provisions into its national legislation. Nevertheless, further efforts are required to ensure full compliance with international standards.

To effectively confront the challenges linked to IDPs' HLP rights, Azerbaijan must implement appropriate administrative, legislative, and judicial measures. This encompasses the allocation of sufficient financial, human, and other resources to address the specific predicaments faced by IDPs. Creating secure conditions for their return and executing procedures for restitution and/or compensation concerning HLP rights are indispensable steps in safeguarding IDPs' rights.

A scrutiny of the national frameworks exposes areas where enhancements can be instituted to refine the legislation and practices related to the voluntary return of IDPs and their HLP rights. From a legal perspective, certain ambiguities within the existing national legislation require rectification.

Looking ahead, it is imperative for the Azerbaijani government to guarantee the alignment of its national legislation with international standards, especially as it undertakes the process of IDP return. By addressing the recognized challenges, which include ensuring safe conditions, adequate resources, and legal clarity, Azerbaijan can

better champion the rights of the hundreds of thousands of IDPs, facilitate their return, and promote their successful reintegration into society.

In essence, safeguarding IDPs' HLP rights necessitates a comprehensive approach that encompasses not only legal reforms but also social, financial, and infrastructural support. It is through such all-encompassing endeavors that the Azerbaijani government can tackle the hurdles encountered by IDPs and work toward attaining enduring solutions that uphold the rights and dignity of all affected individuals.

### **Recommendations:**

In light of the challenges faced in the post-war period and the need to ensure the rights of IDPs and refugees, the following recommendations are proposed:

- 1) **Mine Clearance and Infrastructure Rehabilitation:** Immediate attention should be given to mine clearance efforts in the affected areas to ensure the safe return of IDPs and refugees. International support and cooperation are crucial in this process. Additionally, efforts should be made to rebuild the infrastructure and homes that have been destroyed during the conflict, providing a conducive environment for the returnees.
- 2) **Disarmament of Armed Groups:** Efforts should be intensified to disarm all armed groups in the region, ensuring the safety and security of the local Azerbaijani population. The presence of armed groups poses a threat to the returnees and hampers the establishment of a peaceful and stable environment.
- 3) **Delimitation and Demarcation of the International Border:** The delimitation and demarcation of the international border between Armenia and Azerbaijan should be expedited to reduce the potential for clashes at the border. Clear boundaries and a well-defined border can contribute to a safe environment for the Azerbaijani population in the region.
- 4) **Commitment to Peacebuilding:** Efforts should be made by peace communities in both Armenia and Azerbaijan to promote peaceful cohabitation and reconciliation. Initiatives that foster dialogue, understanding, and trust-building between the communities can help address the negative attitudes resulting from the conflict and pave the way for sustainable peace.
- 5) **Compliance with International Standards:** The government of Azerbaijan should ensure the alignment of national legislation with international standards and norms regarding the rights of IDPs. This includes providing adequate resources and implementing measures to address the issues faced by IDPs, such as securing their right to voluntary return and their rights to housing, land, and property (HLP).

- 6) Improved Legislative Framework: There is a need to review and strengthen the existing legislation to address the challenges related to HLP rights and the restitution of properties for IDPs. Blurry areas in the national legislation should be clarified to provide a clear legal framework for the return process and the protection of IDPs' rights.
- 7) International Support: The international community should continue to provide support to Azerbaijan in addressing the challenges faced by IDPs and refugees. This support can be in the form of financial assistance, technical expertise, and capacity building to ensure the effective implementation of measures to protect the rights of IDPs and facilitate their return.

In order to enhance its approach to protecting the rights of Internally Displaced Persons (IDPs), the Azerbaijani government can consider implementing the following recommendations:

- a) Ensure Consistency with International Standards: By aligning national legislation with international standards such as the UN Guiding Principles on Internal Displacement and the Pinheiro Principles, Azerbaijan ensures that its laws and policies reflect the established norms for protecting the rights of IDPs. This demonstrates a commitment to upholding international standards and providing adequate protection for IDPs.
- b) Include Non-Owner Users in Compensation/Restitution Programs: Many IDPs may not be the owners of the properties they occupied before displacement, such as tenants or non-owner users. By adopting specific laws or guidelines that cover these individuals in compensation and restitution programs, Azerbaijan ensures that all those who have rights to housing, land, and property are considered for compensation or restitution.
- c) Provide Choice for IDPs: Giving IDPs the option to choose between returning to their original residence or utilizing compensation/restitution for alternative resettlement or local integration empowers them to make decisions that best suit their needs and preferences. This approach recognizes the diverse circumstances and preferences of IDPs and promotes their agency in the decision-making process.
- d) Consultation with IDPs: Establishing effective mechanisms for genuine consultations with IDPs is crucial. As decisions regarding return, resettlement, or reintegration processes directly impact IDPs, their perspectives and needs should be taken into account. Meaningful consultation ensures that their voices are heard, their concerns are addressed, and their rights are upheld throughout the decision-making process.
- e) Address Needs of Displaced Armenians: It is essential to consider the needs of local Armenians who were also displaced during the conflict. Providing compensation/restitution mechanisms without discrimination ensures fairness and inclusivity in resolving displacement-related issues. This approach recognizes that

all individuals affected by the conflict, regardless of their ethnic background, have the right to just and equitable solutions.

- f) **Collaboration with Stakeholders:** Engaging with various stakeholders, including civil society organizations, academics, the private sector, and international human rights and donor organizations, brings diverse perspectives and expertise to the table. Collaborative efforts foster innovative solutions and responses that comply with international standards. In particular, working closely with organizations like UNHCR can provide valuable guidance and support in addressing IDP rights effectively.
- g) **Dispute Resolution Mechanisms:** Establishing fair and effective mechanisms to address claims for restitution and compensation in cases of housing, land, and property violations is crucial. IDPs should have access to justice and be able to seek redress for any violations they have experienced. By ensuring accessible and transparent dispute resolution processes, Azerbaijan can address grievances and provide remedies to those affected.
- h) **Inclusion in Land and Housing Schemes:** Including IDPs in broader land and housing schemes demonstrates a commitment to their integration into society. By programming and supporting their housing, land, and property rights, Azerbaijan enables IDPs to access adequate housing and land, which is essential for their successful resettlement and reintegration.
- i) **Combat Tenure Discrimination:** Discrimination based on tenure status should be actively combated. Guaranteeing tenure rights for IDPs in humanitarian assistance, remedies for forced evictions or relocations, and eligibility for national and municipal housing schemes and assistance ensures equal treatment and protection for all individuals, regardless of their tenure status. This helps to prevent discrimination and ensures that all IDPs receive the necessary support and assistance.
- j) **Participatory Approach:** Ensuring a participatory and community-based approach in the development and implementation of strategic action plans is vital. Genuine participation from IDPs and other stakeholders ensures that their voices, experiences, and perspectives are taken into account. This inclusive approach leads to more informed and effective decision-making processes that address the specific needs and concerns of those affected by conflict.

By implementing these recommendations, Azerbaijan can take significant steps towards ensuring the safe and voluntary return of IDPs and refugees, promoting peace and reconciliation, and upholding their rights in accordance with international standards. It is important for all stakeholders, including the government, civil society organizations, and the international community, to work together in a coordinated manner to address these challenges and pave the way for a sustainable and inclusive future for IDPs and refugees in Azerbaijan.



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