

## **PROMO-LEX ASSOCIATION**

*Chişinău, Republic of Moldova*

## **OPINION OF THE PROMO-LEX ASSOCIATION**

on the Draft OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders

*with Emphasis on Human Rights Defenders in Conflict Zones and the State Obligation to Assist Internally Displaced Defenders*

Submission prepared following the Regional Consultation Meeting  
for Central and Eastern Europe, convened by the OSCE Office  
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### **Author and Signatory**

**Vadim Vieru**

*Human Rights Lawyer*

*Program Director, Human Rights Programme, Promo-LEX Association*

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# I. EXECUTIVE SUMMARY

The Promo-LEX Association welcomes the initiative of the OSCE Office for Democratic Institutions and Human Rights (hereinafter, ODIHR) to update the 2014 *Guidelines on the Protection of Human Rights Defenders* (hereinafter, the Guidelines) and appreciates the opportunity to contribute to the Regional Consultation Meeting of 21 April 2026 in Warsaw.<sup>1</sup> The 2014 Guidelines remain a foundational reference in the OSCE region, but twelve years of accelerated conflict, digital repression, foreign influence legislation, and displacement require substantial revision. The present Opinion identifies the most pressing gaps and proposes concrete textual amendments to the draft.

Promo-LEX focuses this Opinion on two interrelated priorities. First, the protection of human rights defenders operating in conflict zones, in occupied territories, and in territories outside the effective control of the recognized State. Second, the state obligation to provide assistance to human rights defenders who acquire the status of Internally Displaced Persons (hereinafter, IDPs) as a consequence of their human rights work. These priorities are informed by Promo-LEX's sustained monitoring of the Transnistrian region of the Republic of Moldova since 2002,<sup>2</sup> and by the broader regional record documented in Ukraine (including the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, as well as areas of the Donetsk, Luhansk, Zaporizhzhia and Kherson regions), Georgia (Abkhazia and the Tskhinvali region / South Ossetia), the South Caucasus following the Nagorno-Karabakh events of 2020 and 2023, and the mass displacement of defenders from the Russian Federation and Belarus.

The principal findings of this Opinion are the following.

- (1) The current draft does not contain a dedicated chapter on defenders in conflict zones, occupied territories, and territories outside the effective control of the recognized State. This silence is inconsistent with the findings of the European Court of Human Rights (hereinafter, ECtHR) in *Ilașcu, Catan, and Mozer*, which confirm that the territorial State retains positive obligations even when it lacks effective territorial control.<sup>3</sup>
- (2) The draft treats relocation of defenders primarily as a question of international transfer to a third State. It does not address the situation of defenders who relocate internally within the same State after fleeing territories outside of government control, and who therefore meet the definition of IDPs under the United Nations Guiding Principles on Internal Displacement.<sup>4</sup>
- (3) The draft needs to be strengthened in relation to four contemporary threats that have intensified since 2014: Strategic Lawsuits Against Public Participation (hereinafter, SLAPPs); targeted digital surveillance and the commercial spyware industry; so called foreign agent, foreign influence, and foreign representative legislation; and transnational repression of defenders in exile.
- (4) The specific protection needs of women defenders in conflict and crisis settings, environmental defenders, and lawyers acting as defenders deserve fuller articulation than the current text offers.
- (5) The framework for implementation in Part IV of the draft would benefit from explicit reference to national IDP legislation, to national action plans, and to the duty of peer

cooperation among OSCE participating States when defenders are displaced across borders or within the same State.

The Opinion proposes redline amendments to paragraphs 12, 19, 21, 32, 73, 79, 83, 86, 97, and 100 of the draft, and recommends the insertion of a new Part V dedicated to defenders in conflict zones and displaced defenders.

## **II. INTRODUCTION**

### **A. About Promo-LEX**

The Promo-LEX Association is a nongovernmental, nonprofit, apolitical organization registered in Chişinău in July 2002. Its statutory mission is to contribute to the development of democracy in the Republic of Moldova, including in the Transnistrian region, through the promotion and protection of human rights, the strengthening of civil society, and the consolidation of a democratic culture. The organization operates through two programmes: the Human Rights Programme and the Institutions and Democratic Processes Programme. The Human Rights Programme focuses on access to justice for residents of the Transnistrian region, strategic litigation before the ECtHR, the fight against torture, the prevention of domestic violence, anti discrimination work, and the protection of defenders at risk.

Promo-LEX is a member of the International Federation for Human Rights (FIDH),<sup>5</sup> the World Organisation Against Torture (OMCT),<sup>6</sup> the Civic Solidarity Platform, the European Platform for Democratic Elections, and the European Prison Litigation Network. In 2016 the Conference of International Non Governmental Organisations of the Council of Europe adopted a dedicated Recommendation on the protection of human rights defenders in the Transnistrian region that referred specifically to the case of the Promo-LEX Association.<sup>7</sup> The Association is also a recurring civil society participant in ODIHR Human Dimension activities and in OSCE Mission to Moldova consultations.

### **B. Scope and purpose of this Opinion**

This Opinion responds to the invitation extended by ODIHR to civil society and defenders' organizations to contribute to the revision of the 2014 Guidelines. It addresses Part II (paragraphs 12 to 40) and Part III (paragraphs 41 to 92) of the draft Guidelines as circulated for the Warsaw consultation, and closes with proposals on Part IV (paragraphs 93 to 105). The Opinion does not purport to cover every element of the draft; it concentrates on the thematic areas where Promo-LEX possesses direct field experience and where its monitoring data can support specific improvements.

The analytical lens adopted is deliberately comparative. Although Promo-LEX's core mandate is the Republic of Moldova, the Transnistrian region shares structural features with several other theatres in the OSCE area: the existence of territories outside the effective control of the recognized State; the presence of parallel administrative and security structures; restricted access for international monitoring bodies; and a pronounced pattern of displacement of defenders, journalists, and civil society actors from those territories toward government controlled areas or abroad. The revised Guidelines can only retain their authority across the OSCE region if they respond to this structural reality.

### **C. Methodology**

The Opinion draws on four categories of sources. First, primary international human rights instruments and soft law, including the 1998 United Nations Declaration on Human Rights Defenders,<sup>8</sup> the 1998 Guiding Principles on Internal Displacement, the 2010 Inter Agency

Standing Committee Framework on Durable Solutions for Internally Displaced Persons,<sup>9</sup> and the 2021 Report of the United Nations Secretary General's High Level Panel on Internal Displacement,<sup>10</sup> along with Council of Europe Committee of Ministers Recommendation Rec(2006)6 on IDPs<sup>11</sup> and the 2008 Committee of Ministers Declaration on defenders.<sup>12</sup> Second, the jurisprudence of the ECtHR on extraterritorial jurisdiction, positive obligations of the territorial State, and judicial harassment of defenders. Third, thematic reports of the United Nations Special Rapporteur on the situation of human rights defenders, of the Council of Europe Commissioner for Human Rights, of ODIHR itself, and of OSCE Moscow Mechanism rapporteurs. Fourth, Promo-LEX's own monitoring reports on the Transnistrian region, comparative data from Ukraine, Georgia, and the South Caucasus, and field documentation published by the Internal Displacement Monitoring Centre and other specialized institutions.

Direct quotations are used sparingly and are paraphrased wherever possible. All sources are recorded as endnotes in Chicago style at the end of the document.

### **III. GENERAL OBSERVATIONS**

#### **A. The continuing value of the Guidelines**

The 2014 Guidelines remain one of the most comprehensive soft law frameworks on the protection of defenders adopted by an intergovernmental organization in the European space. Their normative structure (universal rights as the starting point; the twin logic of state obligations to respect, protect, and fulfil; a specific catalogue of physical integrity, liberty, security, and enabling environment protections) has proven durable. The revision should preserve that structure and build upon it rather than replace it.

At the same time, since June 2014 the OSCE region has experienced a full scale inter state armed conflict on its territory,<sup>13</sup> the dissolution of Nagorno Karabakh as a self declared entity with the consequent departure of its Armenian population in September 2023,<sup>14</sup> the dismantling of established human rights institutions in the Russian Federation including the liquidation of Memorial,<sup>15</sup> the mass displacement of defenders from Belarus after August 2020,<sup>16</sup> the proliferation of foreign agent and foreign influence laws from Moscow to Tbilisi,<sup>17</sup> and the rapid weaponization of commercial spyware such as Pegasus and Predator against journalists, lawyers, and civil society.

An updated text must answer each of these developments in concrete terms. Reaffirming 2014 language without adapting it would reduce the Guidelines to a historical document.

#### **B. Absence of a dedicated chapter on defenders in conflict zones**

The draft makes passing references to human rights work in fragile contexts but does not treat the protection of defenders in conflict zones, in occupied territories, and in territories outside the effective control of the recognized State as a self standing topic. Promo-LEX considers that the revised Guidelines should address this category expressly, reflecting the approach taken by former Special Rapporteur Michel Forst in his 2019 thematic report on defenders in conflict and post conflict situations,<sup>18</sup> and the approach taken by Special Rapporteur Mary Lawlor in her 2023 thematic report on women defenders in conflict, post conflict, and crisis affected settings.<sup>19</sup>

The omission is not a question of taxonomy. Defenders working in these settings face a distinct risk pattern that does not fit cleanly into either the peacetime or the classic international humanitarian law paradigm. Examples drawn from Promo-LEX's monitoring of the Transnistrian region illustrate this. Local defenders and lawyers are systematically prevented from accessing detention facilities; their clients are held on charges such as extremism and treason that exist under the regional legal framework but not under Moldovan law;<sup>20</sup> freedom of movement across the administrative line of the Nistru is selectively restricted; and Moldovan state institutions cannot physically reach victims, witnesses, or documents.

Parallel patterns are reported for the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,<sup>21</sup> for Abkhazia and the Tskhinvali region / South Ossetia,<sup>22</sup> and for Nagorno Karabakh in the period leading to September 2023.<sup>23</sup> A regional instrument such as the revised Guidelines cannot remain silent on the protection architecture that these situations demand.

### **C. Insufficient articulation of state obligations towards defenders who acquire IDP status**

Paragraphs 19, 83, 97, and 100 of the draft address relocation almost exclusively as a matter of diplomatic assistance and visa facilitation by third States. This frame is incomplete. In the OSCE region, defenders who flee territories outside the effective control of their State most often relocate within the same State rather than abroad. Promo-LEX documents several such trajectories each year: defenders from the left bank of the Nistru who relocate to Chişinău or Bălţi; defenders from Crimea who relocate to Kyiv, Lviv, or other Ukrainian cities; defenders from Abkhazia and the Tskhinvali region who relocate to Tbilisi or Kutaisi; and Armenian defenders formerly based in Nagorno Karabakh who have settled across the Republic of Armenia.<sup>24</sup> These trajectories generate a distinct cluster of protection obligations on the territorial State that the Guidelines do not yet articulate.

The applicable legal framework already exists. Principle 28 of the United Nations Guiding Principles on Internal Displacement makes clear that national authorities carry the primary duty and responsibility to establish conditions and provide the means that allow displaced persons to reintegrate or resettle in safety and dignity. Council of Europe Committee of Ministers Recommendation Rec(2006)6 confirms the same approach at the European regional level. The 2010 Inter Agency Standing Committee Framework identifies eight specific criteria for durable solutions: safety and security; an adequate standard of living; access to livelihoods; restoration of housing, land, and property; documentation; family reunification; participation in public affairs; and access to effective remedies. The 2021 United Nations High Level Panel Report has further called on states to integrate internal displacement into national development planning.<sup>25</sup> What is missing in the draft Guidelines is the application of these standards specifically to defenders.

### **D. The jurisprudential basis: continuing obligations of the territorial State**

The ECtHR has repeatedly confirmed that the territorial State's positive obligations do not disappear when it loses effective control over part of its territory. In *Ilaşcu and Others v. Moldova and Russia*, the Grand Chamber held that Moldova continued to have a positive obligation to take the diplomatic, economic, judicial, and other measures that were in its power and in accordance with international law, to secure to the applicants the rights guaranteed by the Convention.<sup>26</sup> The Court reiterated this approach in *Catan and Others v. the Republic of Moldova and Russia*<sup>27</sup> and in *Mozer v. the Republic of Moldova and Russia*, where it confirmed that the scope of Moldova's positive obligation is limited to the diplomatic, economic, judicial, and other measures that are in its power and in accordance with international law.<sup>28</sup>

These principles are transposable across the OSCE region. They entail at least three consequences for the revised Guidelines. First, the recognized State retains responsibility for defenders located in territories outside its effective control and must make reasonable diplomatic and political efforts on their behalf. Second, when a defender leaves such a territory, the recognized State acquires full responsibility for the defender's protection once he or she reaches the controlled area. Third, where the effective control is exercised by another State (Russia in the cited cases, following the Court's findings), that other State also bears Convention responsibility. A revised chapter on defenders in conflict zones can codify these three strands in soft law form, without prejudice to the binding nature of the Convention.

## **E. Transnational repression and defenders in exile**

Since 2014 the OSCE region has witnessed a dramatic expansion of what defenders' organizations now call transnational repression: the extension of surveillance, harassment, detention requests, and physical threats by one state against defenders who have relocated to another. Defenders from Belarus, the Russian Federation, Azerbaijan, and Turkey who have settled in European Union member States have been the targets of hacking, spyware infections, fabricated Interpol notices, passport annulments, asset freezes by proxy, and in certain documented cases physical assault.

The Citizen Lab and similar research laboratories have documented Pegasus and Predator infections affecting exiled Russian and Belarusian journalists and opposition figures based in Latvia, Lithuania, Poland, and other European Union States.<sup>29</sup> The European Parliament PEGA Committee has adopted a detailed Recommendation on the use of Pegasus and equivalent surveillance spyware.<sup>30</sup> The revised Guidelines should acknowledge that a participating State's duty to protect defenders now extends to defenders physically present on its territory but targeted by other states.

## **F. Foreign agent and foreign influence legislation**

Paragraph 73 of the draft addresses restrictions on foreign funding in general terms. Since 2014, however, a distinct legal technology has spread across the region: the designation of civil society organizations, media, and individuals as foreign agents, foreign influence actors, or undesirable organizations. The Venice Commission has assessed this legal technology in successive opinions on Russia (2014, 2016, 2021),<sup>31</sup> on Hungary,<sup>32</sup> on Georgia,<sup>33</sup> and on Kyrgyzstan.<sup>34</sup> The Venice Commission's 2024 urgent opinion on the Georgian Law on Transparency of Foreign Influence went so far as to strongly recommend the repeal of the law in its current form. In March 2025 a draft Foreign Agents Law was submitted in the Parliament of the Republic of Moldova by the parliamentary opposition; the Executive Director of Promo-LEX publicly warned of a Georgian style scenario.<sup>35</sup>

The revised Guidelines should treat foreign agent legislation explicitly. The current generic reference in paragraph 73 is insufficient given the scale and regional spread of this legal technology.

## **G. Strategic Lawsuits Against Public Participation (SLAPPs)**

SLAPPs have now been expressly recognized both in the law of the European Union and in Council of Europe soft law. Directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings was adopted on 11 April 2024; Member States must transpose the Directive by 7 May 2026.<sup>36</sup> The Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec(2024)2 on countering the use of SLAPPs on 5 April 2024.<sup>37</sup> The ECtHR has for its part recognized the SLAPP phenomenon by name in *OOO Memo v. Russia* (2022).<sup>38</sup> The Coalition Against SLAPPs in Europe has documented one thousand three hundred and three SLAPPs across forty three European States between 2010 and 2024; only approximately eight and a half per cent presented the cross border element

required by the European Union Directive.<sup>39</sup> The draft Guidelines should incorporate SLAPPs expressly into Part II Section B on protection from judicial harassment and criminalization.

## **H. Specific categories: women defenders, environmental defenders, lawyers as defenders**

The 2014 Guidelines reference gender in paragraph 9 and in paragraph 20 but do not offer a dedicated section on women defenders in conflict and crisis affected settings. Special Rapporteur Mary Lawlor's 2023 thematic report makes the case for such a section.<sup>40</sup> Environmental defenders appear indirectly in the 2014 text. The designation of a dedicated Special Rapporteur on Environmental Defenders under the Aarhus Convention since 2022, presently held by Michel Forst, calls for explicit recognition.<sup>41</sup> Lawyers acting as defenders, a category particularly relevant in post Soviet jurisdictions where disbarment proceedings are frequently instrumentalized, require articulation that goes beyond the generic reference currently in paragraph 30.

## IV. PARAGRAPH BY PARAGRAPH COMMENTS AND REDLINE AMENDMENTS

This Part presents targeted proposals for textual amendments. Each entry reproduces the relevant language of the draft (italicized), identifies the Promo-LEX concern, and offers revised wording (in bold). Paragraph numbers refer to the Section A text of the draft as circulated for the 21 April 2026 Warsaw consultation.

### A. Part I (General Principles): paragraph 11

Current text (paragraph 11 of the draft) addresses legality, necessity, and proportionality of limitations on fundamental rights connected to human rights work, but does not acknowledge that entire territories within the OSCE region lie outside the effective control of the recognized State.

Promo-LEX proposal: add a new paragraph 11 bis reading as follows.

**11 bis. Participating States recognize that, in parts of the OSCE region, portions of the territory of a recognized State are outside its effective control. The primary responsibility for the protection of human rights defenders on those portions of territory remains with the recognized State, which retains the positive obligation to take all diplomatic, economic, judicial, and other measures that are in its power and in accordance with international law. Where effective control is exercised by another State or by a subordinate local administration, the State exercising effective control also bears full responsibility for the rights of human rights defenders in that territory.**

Rationale: this formulation codifies in soft law the jurisprudence of the ECtHR in *Ilaşcu, Catan, Mozer, Loizidou*, and *Al Skeini*.<sup>42</sup> It does not innovate; it makes explicit a principle that the Court has reiterated consistently for twenty years.

### B. Part II Section A: paragraph 12 (protection from threats, attacks, and other abuses)

Current text (paragraph 12 of the draft) prohibits acts of intimidation or reprisal by state institutions and officials and requires the State to protect defenders from such acts by nonstate actors. The provision is drafted for classic peacetime conditions.

Promo-LEX proposal: insert at the end of paragraph 12 the following sentence.

**In territories outside the effective control of the recognized State, including occupied territories and zones of active armed conflict, the recognized State shall continue to take all reasonable diplomatic, economic, judicial, and other measures in its power and in accordance with international law to seek the protection of human rights defenders located in such territories, and shall record, document, and publicize attacks, threats, and abuses affecting them.**

Rationale: this addition operationalizes the obligation of the recognized State confirmed by *Ilaşcu* and *Mozer*. It also corresponds to the documentation function that Promo-LEX and comparable organizations perform in practice for their respective territories.

### **C. Paragraph 19 (protection policies, programmes, and mechanisms)**

Current text of paragraph 19 calls on States to develop, in consultation with civil society, protection policies, programmes, and mechanisms including physical protection, temporary relocation, and other protection measures. The reference to temporary relocation is welcome but insufficient.

Promo-LEX proposal: replace the sentence on temporary relocation with the following language.

**These should include the provision of physical protection; internal relocation within the territory of the State; temporary relocation abroad; psychosocial support; emergency financial assistance; the issuance or replacement of identity documents; access to housing, health care, education for accompanying children, and livelihoods at the place of relocation; and reintegration measures upon return, where possible. Where the human rights defender acquires the status of an internally displaced person as a consequence of his or her human rights work, including in the situation of defenders leaving territories outside the effective control of the State, the State shall apply the standards set out in the 1998 United Nations Guiding Principles on Internal Displacement, in the 2010 IASC Framework on Durable Solutions for Internally Displaced Persons, and in Council of Europe Committee of Ministers Recommendation Rec(2006)6.**

Rationale: Internal Displacement Monitoring Centre data for the Republic of Moldova, Ukraine, Georgia, and Azerbaijan show that the majority of defenders who flee territories outside effective control relocate within the same State rather than abroad.<sup>43</sup> Moldova does not currently have dedicated IDP legislation and persons displaced from the Transnistrian region to the right bank of the Nistru are not formally classified as IDPs.<sup>44</sup> Ukraine, by contrast, enacted Law No. 1706-VII in October 2014 and has amended it repeatedly, most recently through Law No. 3446-IX of November 2023 on temporary accommodation. Georgia adopted a dedicated IDP law in 1996 and revised it in 2014.<sup>45</sup> The Guidelines should signal to participating States without dedicated IDP legislation that they must either enact such legislation or guarantee the same protections through other effective means, whenever defenders are displaced.

### **D. Paragraph 21 (funding of protection measures)**

Current paragraph 21 requires States to designate sufficient funds in their regular budget for the physical and psychological protection of defenders at risk.

Promo-LEX proposal: add the following sentence at the end of the paragraph.

**Where protection mechanisms are administered jointly by public authorities and civil society, the legal framework must guarantee predictable multi year financing, independent governance, and immunity of the mechanism from political reprisal; where protection requires internal**

or external relocation, the budget must specifically cover housing, transport, documentation, family reunification, and livelihood support at the place of relocation.

### **E. Paragraph 30 (lawyers engaged in human rights work)**

Current paragraph 30 covers retaliation against lawyers, including disbarment threats. Promo-LEX proposes a more affirmative formulation that integrates the United Nations Basic Principles on the Role of Lawyers.<sup>46</sup>

Promo-LEX proposal: add at the end of paragraph 30 the following text.

**In accordance with the United Nations Basic Principles on the Role of Lawyers, States shall ensure that lawyers are able to perform all their professional functions without intimidation, hindrance, harassment, or improper interference. Participating States shall guarantee the independence of bar associations, refrain from any form of reprisal against lawyers on the basis of the identity of their clients, and ensure that privileged communications between lawyers and their clients are not subject to interception, seizure, or compelled disclosure outside the strict limits permitted by international human rights standards.**

### **F. Paragraph 32 (release of arbitrarily detained defenders)**

Current paragraph 32 provides that defenders arbitrarily detained should be immediately released and that States should fully comply with decisions and opinions issued by international human rights mechanisms.

Promo-LEX proposal: add a second sentence as follows.

**In cases where a human rights defender has been detained, tried, or sentenced in a territory outside the effective control of the recognized State, that State shall use all diplomatic, legal, and political means available to secure the release of the defender, including through OSCE mechanisms, international human rights bodies, and bilateral engagement. Upon release or escape, the defender and accompanying family members shall be granted immediate access to the protection, documentation, and durable solution framework established under the relevant national IDP or equivalent legislation.**

Rationale: this formulation captures the Promo-LEX experience with, among others, the case of Oleg Horjan, the former Moldovan parliamentarian and leader of the Transnistrian Communist Party who was sentenced by the Tiraspol authorities and later released; and the case of Ghenadie Ciorba, monitored by Promo-LEX as a long term political prisoner in the Transnistrian region.<sup>47</sup>

### **G. Part II Section B: a new paragraph 36 bis on SLAPPs**

The draft does not contain a dedicated reference to SLAPPs. Promo-LEX proposes the insertion of a new paragraph 36 bis.

**36 bis. Participating States shall take legislative, administrative, and judicial measures to prevent and sanction Strategic Lawsuits Against Public Participation, as defined in Committee of Ministers Recommendation CM/Rec(2024)2. Such measures shall include the possibility of early dismissal of manifestly unfounded claims, the award of costs and damages to the targeted defender, and, where appropriate, the refusal to recognize and enforce third country judgments that constitute SLAPPs against persons domiciled on the territory of the participating State. The measures shall apply to both civil and criminal proceedings and shall extend to lawsuits brought by public officials, state owned entities, or private actors.**

## **H. Paragraph 73 (access to funding): foreign agent and foreign influence legislation**

Current paragraph 73 states that States should not place undue restrictions on NGOs to seek, receive, and use funds and should guarantee that NGOs operating on their territory, whether registered or not, can seek and receive funding from abroad without undue restrictions and requirements.

Promo-LEX proposal: add a new subparagraph 73 bis as follows.

**73 bis. Legislation that designates civil society organizations, media, or individuals as foreign agents, foreign influence actors, foreign representatives, or undesirable entities on the basis of the origin of their funding or of the international nature of their activity is, as a general rule, incompatible with the right to freedom of association, the right to freedom of expression, and the right to participate in public affairs. Participating States shall refrain from enacting such legislation. Where similar instruments already exist, participating States shall repeal or substantially amend them in line with the opinions of the European Commission for Democracy through Law and the recommendations of relevant United Nations mandate holders.**

Rationale: this proposal responds to the consistent jurisprudence of the Venice Commission against this category of legislation, to the 2024 urgent opinion on the Georgian Law on Transparency of Foreign Influence, and to the warning issued in March 2025 in relation to a draft Foreign Agents Law in the Parliament of the Republic of Moldova.<sup>48</sup>

## **I. Paragraph 79 (freedom of movement within the territory): defenders in occupied territories**

Current paragraph 79 refers to access to autonomous regions and disputed territories for the purpose of human rights monitoring and reporting.

Promo-LEX proposal: amend the second sentence to read as follows.

**The State should effectively ensure freedom of movement of human rights defenders across its territory, including to remote regions, autonomous regions, territories outside its effective control, and occupied territories, as**

required to effectively pursue their human rights activities. Where the recognized State cannot itself guarantee such access because of the absence of effective territorial control, it shall pursue all available diplomatic and international means to obtain the cooperation of the authorities or entities exercising effective control on the ground.

## **J. Paragraph 83 (temporary safe relocation and international protection)**

Current paragraph 83 addresses temporary moves to a safe environment and emergency visas, and longer term international protection for defenders who flee their country fearing persecution.

Promo-LEX proposal: insert an intermediate sentence between the reference to emergency visas and the reference to longer term international protection.

**Before considering longer term international protection, the recognized territorial State shall, as a matter of first resort, offer internal relocation options on the parts of its territory that are under effective state control. It shall provide the defender and accompanying family members with the full set of rights guaranteed to internally displaced persons under international and, where applicable, domestic law, including registered IDP status where such status exists, targeted social assistance, housing, livelihoods, documentation, and full access to public services.**

## **K. Paragraph 86 (electronic communications, spyware, surveillance technology)**

Current paragraph 86 asks States to take steps to prevent private companies under their jurisdiction operating internationally from providing software, surveillance technology, and services used to target defenders. The formulation is passive.

Promo-LEX proposal: replace paragraph 86 with the following strengthened language.

**Participating States shall adopt, implement, and enforce a robust legal framework governing the export, import, distribution, sale, transfer, and use of commercial spyware and other intrusive surveillance technologies, including but not limited to Pegasus and Predator. Such a framework shall, at a minimum: prohibit the use of such technologies against human rights defenders, journalists, lawyers, and members of the opposition; impose mandatory human rights due diligence on vendors and end users; provide for effective judicial oversight of any authorized deployment; guarantee a right to notification, remedy, and compensation for persons targeted unlawfully; and establish sanctions commensurate with the gravity of the violation. Participating States shall cooperate internationally in investigating transnational surveillance operations targeting defenders on their territory.**

Rationale: the European Parliament PEGA Committee found serious shortcomings in European Union Member State oversight of commercial spyware.<sup>49</sup> The Citizen Lab has documented

Pegasus targeting of Russian and Belarusian speaking opposition activists and independent media on the territory of European Union Member States.<sup>50</sup> A soft law instrument of the OSCE should reflect the current state of the debate.

## **L. New section on defenders in exile and transnational repression**

Promo-LEX proposes the insertion of a new subsection, after paragraph 86, addressing defenders in exile and transnational repression.

**86 bis. Participating States shall take effective steps to protect human rights defenders who reside on their territory from acts of transnational repression conducted by, or with the acquiescence of, another State. Such steps shall include: refusal to execute manifestly politically motivated extradition, deportation, or red notice requests; the granting of protective identity measures where appropriate; investigation and prosecution of physical attacks and harassment; protection of electronic communications; and cooperation with other participating States and with international mechanisms in documenting and sanctioning transnational repression.**

## **M. Paragraph 97 (national guidelines to support defenders in other States)**

Current paragraph 97 invites States to set up mechanisms and draw up national guidelines to support defenders in other OSCE participating States and in third countries.

Promo-LEX proposal: add a second sentence as follows.

**National guidelines and mechanisms adopted under this paragraph shall pay specific attention to human rights defenders displaced by armed conflict, occupation, or the effective absence of territorial control in their country of origin, and shall establish interoperable standards for reception, documentation, livelihoods, and durable solutions, in conformity with the 1998 United Nations Guiding Principles on Internal Displacement, the 2010 IASC Framework on Durable Solutions, and the 2021 Report of the United Nations Secretary General's High Level Panel on Internal Displacement.**

## **N. Paragraph 100 (emergency visas and relocation support)**

Current paragraph 100 requires participating States, through their diplomatic missions, to facilitate the issuance of emergency visas and relocation support for individual defenders, including their family members.

Promo-LEX proposal: add the following two sentences at the end of the paragraph.

**Where the State of origin is an OSCE participating State in which parts of the territory are outside effective state control, the receiving State shall coordinate with the State of origin to ensure that persons relocating internationally as a result of displacement also benefit, where they later return, from a continuous and documented protection trajectory consistent with the 2010 IASC Framework on Durable Solutions for Internally**

**Displaced Persons. Participating States shall ensure that visa fees, language requirements, and documentation requirements do not place disproportionate obstacles on displaced defenders, their legal representatives, and accompanying family members.**

## V. PROPOSED NEW PART V OF THE GUIDELINES

Beyond the paragraph level amendments in Part IV of this Opinion, Promo-LEX considers that the revised Guidelines should contain a new self standing Part, following the current Part III and before the implementation framework in Part IV. The proposed content is set out below in draft form.

### **Part V. Human Rights Defenders in Conflict Zones, Occupied Territories, and Situations of Internal Displacement**

#### *A. Scope*

**106. This Part applies to human rights defenders who work in, from, or about territories affected by armed conflict, occupation, or the effective absence of territorial control by the recognized State. It also applies to human rights defenders who have been forced to relocate internally or internationally as a consequence of their human rights work and who, on that basis, meet the definition of internally displaced persons under the 1998 United Nations Guiding Principles on Internal Displacement or a comparable national or regional definition.**

#### *B. Obligations of the recognized territorial State*

**107. The recognized territorial State retains full responsibility for the protection of human rights defenders on its territory, including on parts of that territory outside its effective control. Where effective control is absent, the State shall take all diplomatic, economic, judicial, political, and other measures that are in its power and in accordance with international law to seek the protection of defenders in such areas. The State shall document the situation of defenders in areas outside its effective control and shall share relevant information with competent international bodies.**

**108. Where a human rights defender relocates from a territory outside the effective control of the recognized State into a territory under its effective control, the recognized State shall treat the defender as an internally displaced person within the meaning of the 1998 United Nations Guiding Principles on Internal Displacement, regardless of the terminology or status used domestically, and shall apply the full set of protections those Principles require. The State shall provide, at a minimum, registered IDP status where the national legal framework establishes such status; documentation, including the restoration of civil registry records; housing assistance; targeted social assistance; access to health care and education; livelihood support; psychosocial assistance; and continued judicial and law enforcement cooperation for the investigation of threats and attacks against the defender or against family members.**

#### *C. Obligations of the State exercising effective control*

109. A participating State that exercises effective control over a territory other than its own, whether directly or through a subordinate local administration, bears full responsibility for the rights of human rights defenders in that territory under the Convention and under relevant OSCE commitments. That State shall not support, tolerate, finance, or supply subordinate authorities that commit acts of reprisal against defenders. It shall cooperate with international mechanisms seeking access to the territory for human rights monitoring.

#### ***D. Durable solutions for displaced defenders***

110. Participating States shall recognize that the durable solutions framework elaborated by the Inter Agency Standing Committee (safety and security; adequate standard of living; livelihoods; restoration of housing, land, and property; documentation; family reunification; participation in public affairs; access to effective remedies) applies in full to displaced defenders. Participating States shall further ensure that displaced defenders are consulted on their preferred durable solution, whether return, local integration, or settlement elsewhere in the country, and shall take steps to remove practical obstacles to each of these options.

#### ***E. Specific categories***

111. Particular attention shall be paid to women defenders in conflict and post conflict settings, to lawyers acting as defenders, to journalists working in conflict zones, to environmental defenders, and to defenders belonging to national, ethnic, linguistic, or religious minorities. Protection measures shall be gender responsive and shall address the distinct risks faced by each of these categories.

#### ***F. Access to international mechanisms***

112. Participating States shall facilitate, to the maximum extent possible, access by international and regional human rights mechanisms to territories affected by conflict or outside effective state control, including by providing relevant mechanisms with information, by requesting their involvement, and by facilitating communication between defenders operating in or originating from such territories and the competent mechanisms.

## **VI. CONSOLIDATED RECOMMENDATIONS**

On the basis of the analysis above, the Promo-LEX Association respectfully submits the following recommendations to ODIHR, to the OSCE participating States, and to the Drafting Committee revising the 2014 Guidelines on the Protection of Human Rights Defenders.

### **A. To the OSCE Office for Democratic Institutions and Human Rights**

1. Incorporate a dedicated Part V of the revised Guidelines addressing human rights defenders in conflict zones, in occupied territories, in territories outside the effective control of the recognized State, and in situations of internal displacement, along the lines proposed in Part V of this Opinion.
2. Integrate throughout the revised text explicit references to the 1998 United Nations Guiding Principles on Internal Displacement, to the 2010 IASC Framework on Durable Solutions for Internally Displaced Persons, to Council of Europe Committee of Ministers Recommendation Rec(2006)6, and to the 2021 Report of the United Nations Secretary General's High Level Panel on Internal Displacement.
3. Codify, in the form of a new paragraph 11 bis, the jurisprudence of the ECtHR on the continuing positive obligations of the territorial State over parts of its territory outside its effective control.
4. Incorporate a dedicated provision (new paragraph 36 bis) on SLAPPs, aligned with Council of Europe Recommendation CM/Rec(2024)2 and with Directive (EU) 2024/1069.
5. Incorporate a dedicated provision (new paragraph 73 bis) on so called foreign agent, foreign influence, and foreign representative legislation, aligned with successive Venice Commission opinions.
6. Strengthen paragraph 86 to address commercial spyware and intrusive surveillance technology directly, including prohibitions, oversight, notification, and remedy.
7. Insert a new paragraph 86 bis on transnational repression and on the protection of defenders in exile.
8. Revise paragraphs 19, 21, 30, 32, 73, 79, 83, 97, and 100 as proposed in Part IV of this Opinion.
9. Publish the Explanatory Report to the revised Guidelines in a form that cross references each provision with the leading ECtHR jurisprudence, Venice Commission opinions, and United Nations mandate holder reports.

### **B. To OSCE participating States**

1. Enact or update national legislation on the protection of internally displaced persons that explicitly covers defenders displaced as a consequence of their work, with full application of the durable solutions framework.
2. For the Republic of Moldova specifically, adopt national IDP legislation and formally recognize persons displaced from the Transnistrian region as internally displaced

persons, thereby ending the long standing legislative gap currently documented by Promo-LEX and by international observers.

3. Refrain from enacting foreign agent, foreign influence, and foreign representative legislation, and, where such legislation already exists, proceed to its repeal or substantial amendment.
4. Transpose Directive (EU) 2024/1069 on SLAPPs by the 7 May 2026 deadline and, for States not bound by that Directive, adopt equivalent legislation in line with Committee of Ministers Recommendation CM/Rec(2024)2.
5. Adopt a national legal framework governing commercial spyware and intrusive surveillance technology that provides for a prohibition on use against defenders, for judicial oversight of any authorized deployment, and for a right to notification and remedy.
6. Establish or strengthen national protection mechanisms for defenders that include internal relocation, emergency financial assistance, psychosocial support, and documentation services, and ensure predictable multi year financing for those mechanisms.
7. Facilitate access by international and regional human rights mechanisms to conflict affected territories and territories outside effective state control.
8. Cooperate, through OSCE and other international channels, in preventing, investigating, and sanctioning transnational repression against defenders.

### **C. To the OSCE Drafting Committee**

Promo-LEX stands ready to contribute further written comments on subsequent drafts and to participate in any follow up consultations, including on the drafting of the Explanatory Report to the revised Guidelines. Promo-LEX can also provide comparative field data from its monitoring of the Transnistrian region of the Republic of Moldova since 2002, which offers a distinctive perspective on the protection needs of defenders in OSCE territories outside effective state control.

### **Closing**

The updated ODIHR Guidelines will shape the protection of defenders in the OSCE region for the coming decade. The revised text should reflect the reality of that decade as it now stands. Promo-LEX respectfully submits the present Opinion in that spirit and thanks ODIHR for the opportunity to contribute.

Signed,

**Vadim Vieru**

*Human Rights Lawyer*

*Program Director, Human Rights Programme*

*Promo-LEX Association, Chişinău, Republic of Moldova*



## ENDNOTES

*The following endnotes are formatted in the notes style of The Chicago Manual of Style (17th edition), adapted for legal and international human rights materials.*

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