



## **Overview of current state of rights and freedoms protection of internally displaced persons in Ukraine**

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## 1. Introduction

With the beginning of the Crimean peninsula occupation and armed conflict in Donetsk and Luhansk regions, Ukraine has faced a new phenomenon– mass internal displacement of the population. As of September 29th, 2016 according to the official figures of the Ministry of social policy of Ukraine, there are 1 705 363 internally displaced persons (hereinafter - IDPs). Near 60 % of all IDPs are children and elderly people.

During two and a half years of displacement authorities of Ukraine slowly and uncertainly have been implementing policy aimed at stabilization of the situation in Ukraine, guaranteeing and protecting of IDPs' human rights. The civil society notes out positive changes – the adoption of legislation that stipulates rights and freedoms of IDPs, the establishment of the Ministry on Temporarily Occupied Territories and IDPs as a coordinating central body of executive power dealing with mentioned issues etc. Unfortunately, the majority of measures taken at the moment are not effective sufficiently; some of them completely contradict the Constitution of Ukraine and international obligations.

We are pleased to present a brief analysis of the human rights and freedoms of IDPs situation in Ukraine reflecting relevant recommendations of civil society organizations, being the authors of this document.

## 2. The situation with ensuring of rights and freedoms of internally displaced persons in Ukraine

Among the main problems that internally displaced persons (IDPs) in Ukraine are still forced to deal with are suspension or denial of social payments and incomprehensibility of the verification procedure. Moreover, according to the data from the NGOs that provide legal aid to IDPs, displaced persons more often ask for such aid when they need to renew certain documents such as passports, tax ID numbers, diplomas, property titles, etc., obtain IDP certificates, employment termination documents from employers located in non-government controlled areas of Eastern Ukraine (NGCA) and subsequent execution of employment documents, as well as subsidies on utility payments.

Other serious challenges for IDPs are finding employment and accommodation.

The two main problems that approximately 40% of IDPs have faced while looking for work are low wages and lack of vacancies matching their educational and professional skills levels. However, only half of the interviewed IDPs showed interest in further training in order to improve their professional skills. Also, a third of IDPs stated that employers often do not want to hire them and by doing so employers discriminate against IDPs in comparison to the locals.

In roughly 90% of cases IDPs from Eastern Ukraine and Crimea found accommodation in privately owned houses and flats and are obliged to pay rent with their own money due to the fact that the state targeted social assistance does not cover the rent payments. Close to 4% of



IDPs are still residing in collective centres. That has a negative impact of slowing down their personal development and successful integration into the hosting communities.

IDPs have the same rights and freedoms as the rest of the population of Ukraine. Yet the internal displacement in Ukraine has created certain risks and vulnerabilities which are presented in more detail below.

### **2.1. Registration of internally displaced persons in Ukraine**

It is impossible to say how many people are affected by problems with registration, or are not registering for a variety of reasons.

Not only has the government struggled to find an effective and efficient means of registering IDPs, it has also failed to make the information it has collected accessible to the public. As of yet, the government there was no established system for providing information about the characteristics of the IDPs it has registered (age, gender, etc.), nor has it produced an overall profile of the displaced population.

At the same time, according to the Ministry of Social Policy information on August 2<sup>nd</sup>, 2016 a Single Information Database of IDPs (SID) was launched in a test mode as part of the Project "Comprehensive stabilization support of IDPs and affected populations in Ukraine", created with the financial support of the European Union.

The indicators of reliability of the information system will be evaluated based on the trial mode exploitation and tests that will be carried out. All the identified deficiencies and observations as well as the timing of completion will be specified in the minutes of approvals. After making all the changes an act of transferring the SID into full operation mode and an act of completion will be made.

It is expected that the SID will be introduced in September 2016.

Functionality of the database expands by adding data on placement, employment, education, specialization and professional education, needs and intentions of displaced people. The work on launching an information exchange between the SID and the State Border Service of Ukraine via the information system "Arkan" is also conducted.

The implementation of a secure network of transferring data from Ministry of Social Policy (MoSP) is being completed by creation of infrastructure of cryptographic protection of data links between the MoSP and structural units on social protection of local state administrations.

It was established a cooperation between SID software developers and state enterprise "Information Centre of the Ministry of Social Policy". The unloading of data from the existing information system of registered IDPs into SID was carried out.

At the moment MoSP provides technical assistance to structural units on social protection of local state administration on the operation of the SID software and secure network of transferring data of Ministry of Social Policy. Also, as part of the Project trainings for social protection units' staff on the operation of the updated database were held.

In addition, on June 8, a new form of IDPs certificate was approved by the Government. And now it looks like a sheet of A4 paper stamped and signed by the authorized person. A certificate is provided for free and made immediately if a registration of place of residence in NGCA exists in a passport of an IDP, or within 15 days in case of absence of a stamp of registration of place of residence in national passport and confirmation of residence by sufficient evidence. The list of evidence is not exhaustive, it can be documents, photos and videos - all that is allowed as evidence to establish a fact in civil law and has legal significance. It also can be documents on ownership, education, extracts from a labour book etc.

Each person who applied for an IDP certificate, including young children, could receive an IDP certificate.

Children are given special attention: the government regulated the order of obtaining an IDP status by minor orphans and children deprived of parental care, defined a list of documents that must be submitted for this purpose. It was also somewhat expanded. From now with the application for receiving an IDP certificate it is also could be submitted additional information relating to vulnerability of an applicant that needs a special attention: information about the place of education and upbringing of a child, on the legal representatives accompanying the child, about disability and the need for technical and other means of rehabilitation. Also, the state collects data on employment, education, specialization in professional education, position, profession of IDPs. In the future, it should help to implement long-term solution.

Another important point is the confirmation of the right to be registered as an IDP by persons serving sentences in prisons whose place of residence was registered on the temporarily occupied territories or NGCA. This happened against the backdrop of an active dialogue on the transfer of convicted persons to places of detention in government controlled territory.

## **2.2. Social security**

Cabinet of Ministers' Resolution number 637 (November 5, 2014) "On social benefits for internally displaced persons" prescribes pension payments (monthly lifetime allowance), state grants and lifetime stipends, all other social benefits and compensation, compulsory social insurance to be made based on current location of IDPs, accredited by IDP certificate (outlined in Decree number 509, October 1, 2014).

Therefore IDPs can receive social benefits they are qualified for only after getting the official IDP certificate.

A special letter has been issued by the Cabinet on February 16, 2016 (№ 672/0/10-16/081), "On strengthening controls on accounting for internally displaced persons" in which the mandate was given to the management of social security offices to strengthen control over the procedure of registration of IDPs. Starting February 18, 2016, the social security offices started receiving lists compiled by Security service of Ukraine (SBU), containing information



regarding IDPs who should be stricken down from the registry due to them allegedly residing in temporarily non-government-controlled areas (NGCA). The existence of these lists has been confirmed by the Minister for Social Policy, when he reported on partnership with SBU in their ‘crusade against social benefits fraud’.

Using these lists, the social security offices have started excluding IDPs en masse from the register, without notice.

Automatic suspension of IDPs certificates and consequently social benefits on the basis of lists generated by the unknown and unpredictable legal criteria without taking informed decisions in each particular case, is clashing with the Constitution and the Law of Ukraine "On the rights and freedoms of internally displaced persons" (hereinafter - the Law)..

First of all, the law does not provide an option to ‘suspend’ IDP certificates, thus making these decisions taken by the social security offices illegitimate.

There are only five reasons the certificate may be revoked:

- Applying to have the certificate made void;
- Committing a felony listed in article 12;
- Returning to the original place of residence;
- Moving to another country;
- Applying based on false information.

Additionally, the law prescribes the decision to strike a person down from the IDP registry to be made by a social security office, with a three day notice issued to the individual in question.

June 8 saw the Cabinet amend the Resolution number 637 “Some issues of social benefits internally displaced persons”. In particular, the proposed changes set up the Order of appointment (recovery) of social benefits to IDPs and monitor the validity of IDP claims based on their current place of residence.

These changes significantly worsen the position of those who were forced to leave their homes due to the armed conflict in the east, introducing additional discriminatory mechanisms when it comes to restore social benefits and control of the state. Moreover, these innovations are critical in terms of the widespread suspension of payments of all kinds of social benefits and pensions of thousands of IDPs for nearly five months.

### **2.3. State pensions for citizens residing in NGCA**

Currently the government does not guarantee social security for people in NGCA, forcing them instead to use procedures established in Resolution number 637 designed for IDPs. This means that people who are eligible for the state pension guaranteed by the Constitution, are forced to travel away from their homes in uncontrolled areas and apply for IDP status, despite not being actually displaced. As a consequence, official statistics on the number of IDPs is wildly inaccurate. Around 1.2 mil seniors reside in NGCA. According to the Ministry of Social Policy around 800 000 of them were registered as IDPs in 2015.

Over the course of 2015 the Ministry suspended payment to over 180 000 IDPs, acting on data from SBU. Citing aforementioned 'SBU lists', by August 2016 the Ministry have flagged over 300 000 people as non-eligible for any payments or transfers. It is likely that these people were not able to undergo repeated certification due to residing in occupied territories, severing them from an important and often sole income source.

Most probably that the majority of citizens in NGCA will lose access to social security payments due to the new procedures adopted on June 8th. Often these people are unable to certify their status due to the difficulty of the journey required to do so (elderly or disabled people), with some being deprived of payments they are entitled for about two years.

## 2.4. Freedom of movement

### *Crimea*

Albeit not as intensely, people are still moving from Crimea to mainland Ukraine. Relevant procedures however have been changed significantly since 2014.

In late 2014 rail and bus connection with Crimea have been suspended. Summer 2015 saw the Cabinet establishing a new procedure for entering and leaving occupied territories, simplifying the process for minors, foreign citizens and people with no citizenship. In October 2015 a civil 'blockade' of the peninsula have commenced on the border with Crimea, initiated by Ukrainian activists, aiming to sever economic ties with Russian federation. As a result, on December 16, 2015 the Cabinet have prohibited movement of certain goods and services to and from occupied territories. Only a limited number of items were still allowed to be moved to and from, including personal belongings and food up to 10 000 UAH and 50 kilos per person.

Despite these new restrictions have been a cause of much outrage from citizens, local and foreign NGOs, as being an example of encroachment over the freedom of movement, no changes have been made to it so far.

On August 7, occupation forces on the peninsula have abruptly closed checkpoints of Kalanchak, Chaplinka and Chingar, causing lengthy queues on both sides. This was exacerbated by complete absence of amenities required to support such a large number of people at those checkpoints. Thus, territory of checkpoints, or buffer zone between them is not equipped with toilets, a well or other source of water and shelter from the sun.

By August 10 the work of checkpoints has been resumed and normalised since. Later it became known that the reason for such a temporary blockade was a conflict between the security forces of the Russian Federation. In addition, during the aforementioned period, human rights activists noted the active militarization of the administrative border from the Crimean side.

### *Eastern Ukraine*

Freedom of movement of civilians is limited to the territory of Donbass. In January 2015 the Interim Order to control the movement of persons, vehicles and goods along the contact line within the Donetsk and Lugansk regions was approved, which, in particular, introduced the need to obtain permits to cross the contact line.

Currently there are 6 official corridors, with four in Donetsk region:

- Gnutove
- Novotroytske
- Maryinka
- Zaytsevo

And two more in Luhansk region:

- Stanitz Luhanska (pedestrian traffic only)
- Zolote (not functioning since 'LNR's refusal to cooperate)

All checkpoints are still subject of occasional and sudden interruptions due to armed conflicts sparking up.

In terms of throughput, demand still vastly surpasses checkpoints' capacity, with 25000 people crossing the contact line every day, with queues ranging from 1 to 20 hours long, often leading to people being forced to spend the night at the checkpoint, risking being hurt in armed clashes.

Overall, checkpoints lack proper amenities to accommodate people in extreme weather. In July, two deaths were reported of people who became ill in the queue (checkpoint Zaitsevo, checkpoint Mayorsk on so-called "DNR" side).

There is an urgent need to improve the capacity and equipment of checkpoints throughout the contact line and increase the number of corridors especially in the Luhansk region.

## **2.5. The right to education**

As of August 2016, the issue of IDPs' access to education is partially resolved. Additional places in kindergartens and schools were allocated for the children of IDPs; 6 higher educational institutions were relocated from Crimea and the NGCA; a simplified procedure of enrollment for IDP-enrollees was created; a more flexible procedures of confirmation of educational level and transfer of students from the occupied territory were established etc.

However, there are evident problems with the state-declared benefits for IDP students, namely the fact that the secondary legislation that would determine how to get pre-school, extra-curricular, secondary, vocational and higher education in any form of studying by IDPs and residents of temporarily occupied territory of Ukraine is absent. A full implementation of the Law #425-VIII is also lacking, because of which there are problems with the allocation of additional budget places for IDPs in the higher educational institutions, free places in dormitories for IDP students are absent etc.

In addition, the level of technical and financial support of schools with the possibility of distance learning and displaced HEIs is unsatisfying, which makes it difficult for the



institutions to function properly. The implementation of transfer procedure of the students from the temporarily occupied territory and confirmation of their education level are at an unsatisfactory level and need substantial improvement.

## **2.6. Political rights**

More attention must be paid to the creation of a free access to voting in national and local elections for IDPs, as about 3.5% of the Ukrainian electorate who are internally displaced are deprived of the full mechanism for realization of their political rights.

In the parliamentary elections in October 2014, all IDPs (about 500 000 people as of October 2014), had no rights to elect a deputy of the Verkhovna Rada of Ukraine in majority constituency at their new place of residence. 1 345 100 IDPs did not participate in October 2015 local elections and failed to elect local councils.

However, much of IDPs left their homes more than a year ago, assimilated in their new place of residence and perceive themselves as members of the new communities. Therefore, this category of voters should also influence the choice of local councils at their place of residence by voting.

The Constitution of Ukraine and international standards clearly define the equality of rights of all citizens, particularly in the matters of electoral law. Article 38 of the Constitution states that citizens have the right to participate in the administration of state affairs, in All-Ukrainian and local referendums, to freely elect and to be elected to bodies of state power and bodies of local self-government.

Article 14 of the Law of Ukraine "On ensuring of rights and freedoms of internally displaced persons" states that IDPs shall enjoy same rights and freedoms as other persons that permanently reside in Ukraine in accordance to the Constitution, legislation of Ukraine and international agreements. Their discrimination upon exercising any rights and freedoms based on their internal displacement shall be prohibited.

Guiding Principles on Internal Displacement (1998) prohibit discrimination against IDPs as a result of their displacement in the enjoyment of the right to associate freely and participate equally in community affairs, the right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right.

Recommendations of the Committee of Ministers of the Council of Europe, Recommendations of the PACE define the obligations of States to legally ensure the rights of displaced persons during the elections, including local, however, these rules have not been considered by the Verkhovna Rada. Today this problem about the implementation of the electoral law of IDPs can be eliminated only by a court decision in favor of the plaintiff.

Three bills that propose to solve the issues of voting in local elections for IDPs are registered in the Verkhovna Rada since August 2015. The bill #2501 (V. Homutynnik, V. Bondar) propose the possibility of voting for IDPs by allowing to temporary change the place of voting, without changing their voting addresses. Alternative Bills #2501a-1 (S. Taruta and



others) and 2501a-2 (Y. Liovochkina) both offer to solve electoral issues by changing voting addresses of IDPs but in different ways.

Experts insist that the Bill 2501a-1 deserves the most attention, because it simultaneously allows IDPs to realize their rights and to avoid electoral manipulations. It proposes to use by-notice (not automatic) principle of the change of voting address. In addition, the Bill #2501a-1 introduces certain restrictions on the second change of address within a year. However, the relevant committee of the Verkhovna Rada gave a negative assessment of both bills and, as a result, they were not submitted to the deputies.

The issues of the development of the realization mechanism of the political rights of IDPs are reflected in the Resolution of the Verkhovna Rada of Ukraine passed on March 31 2016 On recommendations of Parliamentary hearings «The state of the rights of internally displaced persons and citizens of Ukraine residing in the temporarily occupied territory of Ukraine, and in the temporarily uncontrolled territory in the area of the anti-terrorist operation». According to the resolution, the Cabinet of Ministers of Ukraine shall prepare and submit to the Verkhovna Rada of Ukraine a number of legislative proposals on the possibility of changing voting addresses of IDPs based on personal applications and IDP certificates.

However, no changes have occurred. According to the Ombudsman, this situation violates the principle of non-discrimination, both in terms of equality of rights and freedoms and equality of opportunities (Article 2 of the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”), constitutes indirect discrimination on the grounds of the place of residence and being an IDP, and contradicts the standards of international law, the Constitution, laws of Ukraine, and Ukraine's commitments to ensure sustainable integration of IDPs at the place of their displacement.

## **2.7. Establishment of facts of birth or death that occurred on NGCA / occupied territories of Ukraine**

Particular issue is a receiving the legal documents that confirm the facts of birth or death that occurred on NGCA of Ukraine. Now Ukraine does not recognize any legal documents, which were issued by so-called “LPR” and “DPR”. On other hand, there are no legal procedures of verification (confirmation) of documents that were issued on NGCA and in some cases, such situation makes realization of rights for social protection, birth assistance, right of inheritance etc. impossible. Unfortunately, there is no administrative (non-court) procedure of recognizing of documents of birth or death that occurred on the temporarily occupied territory of Ukraine and procedure of registration of those facts by bodies of civil registration.

In the February of 2016, the amendments (art. 257-1) to the Code of civil procedure of Ukraine were made. These the amendments concern the establishment of facts birth or death that occurred on the temporarily occupied territory of Ukraine and substantially simplified the procedure, which had been applied before. Thus, according to the art. 257-1 of the Code of civil procedure of Ukraine, the applicant may address to any court in the territory that is under

government control to establish the fact of birth or death. Also, the term of trial was reduced essentially. If earlier the process of trial lasted for two-three months, now that term is several days (in some cases the trial is done in the day of receiving of application by court). The other significant issue is that the decision is subject to immediate execution.

However, the court procedure has some significant drawbacks.

First, it is the payment of the court fee. Now the amount the court fee in the cases of establishment of facts of birth or death is 275.60 UAH (it is about \$10), which is sizeable amount of money for some families that live in NGCA. In some circumstances (i.e. tough financial position), the court may free the particular applicant from the obligation to pay the court fee by special decision. However, the evidences of such circumstances should be presented and the decision is still depends on the position of court.

Second, the circle of applicants for such cases is limited. I.e. only a relative or lawful representative can address to court for establishment of fact of death by simplified procedure. Friends, neighbors, family members who had no blood relations with a deceased. In that case the simplified procedure can not be applied.

### 3. Conclusions and recommendation

Thus, having analyzed the problems faced by IDPs, and other conflict-affected population of the occupied territory and NGCA during the conflict, we conclude that, unfortunately, Ukraine does not fulfill its “positive” and “negative” commitments as for its citizens facing difficult circumstances caused by the Russia’s aggression. Notwithstanding certain positive changes, general level of protection of and respect to the aforementioned categories of citizens remains unsatisfactory and requires substantive improvement.

Hence, we would like to provide the following recommendations to the governmental stakeholders of Ukraine on behalf of the civil society members:

#### 1. *To the Verkhovna Rada (the Parliament):*

- Initiate development and legislative approval of the State strategy as to restoration of Ukraine’s integrity, occupied territories, compliance with and respect to the rights and freedoms of IDPs residing on the temporarily occupied territory and NGCA;
- Introduce amendments to the law of Ukraine “On the rights and freedoms of citizens and the legal regime on the temporarily occupied territory” (to the articles 9, 12) in order to ensure the administrative procedure to register birth and death on the NGCA by the registry;
- Repeal the law “On creation of the free economic zone Crimea and on the specifics of the economic activity on the temporarily occupied territory of Ukraine”;
- Introduce amendments to the law and bylaw in order to ensure IDPs’ rights to participate in local elections.



2. *To the Cabinet of Ministers:*

- Support implementation of action plan on implementation of the National strategy on human rights;
- Amend the CMU's Decree of November 5, 2014 #637 in order not to associate social payments with IDPs certificates;
- Suspend discriminatory system of control, appointment and renewal of the social payments to IDPs, provided by the CMU's Decree of June 8, 2016 #365;
- Along with the representatives of NGOs and INGOs develop and adopt the mechanism of all kinds of social payments, including pensions, to all the citizens residing on NGCA;
- Amend the CMU's Decree of December 16, 2015 #1035 to ensure liberalization of transportation of goods and services through the administrative border with Crimea:
- Set the order to acquire preschool, school, professional and higher education by IDPs and by the residents of the temporarily occupied territory of Ukraine under any form of education. Also, improve the order to transfer and proof of qualifications by the IDP students;
- Support sponsorship to provide IDPs with additional budget places in universities, free dormitories;
- Equip all the checkpoints at the administrative borderlines with NGCA and the temporarily occupied territory Crimea with essentials and create the most favorable conditions in compliance with the sanitary requirements and the mobile centers to provide administrative assistance.