



OBSERVANCE OF CIVIL AND POLITICAL RIGHTS OF PERSONS AFFECTED BY AN ARMED CONFLICT IN UKRAINE

Shadow report of the Coalition of NGOs on Ukraine's
implementation of the International Covenant on Civil and
Political Rights

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INTRODUCTION

In 2013, the state of Ukraine submitted the Seventh Periodic Report on the implementation of the provisions of the International Covenant on Civil and Political Rights. Having considered this report, the Human Rights Committee issued its Concluding Observations containing a set of recommendations. They concerned improving anti-discrimination legislation, strengthening the Office of the Parliamentary Commissioner for Human Rights (Ombudsperson), combating torture, preventing domestic violence, etc. These recommendations – while remaining quite relevant today – do not feature a critical factor that emerged in 2014 and significantly impacted on the life of the entire Ukrainian society and on the functioning of the Ukrainian state. This critical factor is an international armed conflict.

Due to the armed aggression of the Russian Federation, part of the territory of Ukraine – the Autonomous Republic of Crimea, Sevastopol, as well as a part of the territory of Donetsk and Luhansk oblasts – has been recognized as temporarily occupied territories (TOTs)¹.

Hostilities and military occupation have caused numerous casualties among the civilian population. According to the United Nations Human Rights Monitoring Mission in Ukraine, throughout 14 April 2014 – 15 May 2018, at least 3,023 civilians were killed, and between seven and nine thousand civilians were injured². According to the International Committee of the Red Cross, in the context of the armed conflict more than 1,500 people went missing – half of them civilians³. In addition, the armed conflict caused the large-scale internal displacement. According to the Ministry of Social Policy of Ukraine, as of 28 January 2019, 1,353,412 internally displaced persons from the occupied territories of Donetsk and Luhansk oblasts and the Autonomous Republic of Crimea were registered⁴. The hostilities destroyed over 40 thousand houses⁵. Although active hostilities continue, a

1 The territory of the Autonomous Republic of Crimea and the city of Sevastopol was declared temporarily occupied in 2014 (in accordance with the Law of Ukraine "On ensuring the Rights and Freedoms of Citizens and Legal Regime on the Temporarily Occupied Territory of Ukraine" (# 1207-VII), and part of the territory of Donetsk and Luhansk oblasts was recognized occupied by the Russian in 2018 (in accordance with the Law of Ukraine "On the Peculiarities of State Policy on Ensuring the State Sovereignty of Ukraine on Temporarily Occupied Territories in Donetsk and Luhansk oblasts" (# 2268-VIII)).

2 https://www.ohchr.org/Documents/Countries/UA/ReportUkraineFev-May2018_UKRAINIAN.pdf

3 <http://ua.icrc.org/2018/07/12/icrc-welcomes-adoption-law-missing/>

4 <https://www.msp.gov.ua/news/16617.html>

5 https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_humanitarian_needs_overview_2018_en_1.pdf

lot of people – according to NGOs, over 4.5 million – still reside on temporarily occupied territories for various personal, family, economic and other reasons.

After the armed conflict outburst in Ukraine, part of the territory controlled by the Russian Federation or its affiliated illegal armed groups, as well as the residents of these territories found themselves in isolation that is getting worse over time. On the Government-controlled territories of Ukraine, documents issued by representatives of de facto authorities on the TOTs are not recognized. Ukrainian mass media do not broadcast on the TOTs. On the TOTs, the foreign currency – the Russian rouble – replaced Ukrainian hryvnia. The public transport connection with the TOTs was interrupted in 2014. At the same time, to fulfil their rights guaranteed by the Constitution, residents of the TOTs are forced to get registered as internally displaced persons (IDPs), since they are enabled to enjoy their social and economic rights only if they have an IDP certificate.

Notwithstanding the ongoing armed conflict and the loss of control over a part of the territory, the state of Ukraine is taking certain measures to ensure enjoyment of the rights of the IDPs and residents of the occupied territories. In particular, the government provides financial assistance to IDPs to pay for housing and utility services, state housing programmes have been launched, certain privileges are granted to the residents of the occupied territories and conflict-affected people when entering universities, etc.

At the same time, actions taken by the state cannot be considered sufficient to ensure the observance of the rights of persons affected by the conflict in Ukraine (in particular, the IDPs and the residents of the TOTs); and certain actions may be regarded as discriminatory and violating human rights, in particular those falling within the scope of the International Covenant on Civil and Political Rights. In particular, it concerns the restriction of the right to vote, rights to social protection, freedom of movement and other rights, which are described in more detail in the relevant sections below.

This shadow report focuses on the analysis of numerous violations of the rights of conflict-affected people in Ukraine, namely, internally displaced persons, residents of the TOTs, as well as those who were deprived of their liberty for political reasons on the temporarily occupied territories of Ukraine.

The shadow report was drafted by the Coalition of NGOs that deal with the rights of internally displaced persons and the residents of the temporarily occupied territories of Ukraine. The authors of the report have considerable experience in drafting and advocating

for legal provisions on the IDP rights protection, participate in working groups under line ministries, provide significant social, information and legal assistance to conflict-affected persons, cover events occurring on the temporarily occupied territories of Ukraine.

- NGO "Donbas SOS," donbasssos.org
- NGO "Crimea SOS," krymsos.com
- CF "Right to Protection" (Pravo na Zakhyst), vpl.com.ua
- CF "Vostok SOS," vostok-sos.org
- NGO "Group of Influence" (Hrupa Vplyvu), vplyv.org.ua
- Programme of advisers on internally displaced persons implemented by the CF "Stabilization Support Services," radnyk.org
- NGO "Human Rights Information Centre," humanrights.org.ua

ARC – Autonomous Republic of Crimea

ATO – antiterrorist operation

CCU – Criminal Code of Ukraine

CMU – Cabinet of Ministers of Ukraine

IDP – Internally Displaced Person

MIA – Ministry of Internal Affairs of Ukraine

MSP – Ministry of Social Policy of Ukraine

MTOT – Ministry of Temporarily Occupied Territories and Internally Displaced Persons of Ukraine

JFO – Joint Forces Operation

SBGS – State Border Guard Service of Ukraine

SMS – State Migration Service of Ukraine

SSU – Security Service of Ukraine

TOT – temporarily occupied territories of Ukraine defined by the laws of Ukraine (territories of the Autonomous Republic of Crimea, Sevastopol, parts of Donetsk and Luhansk oblasts)

USRCD – Unified State Register of Court Decisions

DISCRIMINATION OF THE IDPS AND RESTRICTION OF THE GUARANTEED CONSTITUTIONAL RIGHTS (ARTICLES 2, 25, 26 OF THE COVENANT)

1. According to part 1 of Article 2 of the Covenant, each State Party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. The provision prohibiting discrimination on any ground, including race, colour, political, religious or other opinions, national or social origin, property status, place of residence, language and other grounds, is enshrined in Article 24 of the Constitution of Ukraine.
3. At the same time, internally displaced people and residents of the temporarily occupied territories face numerous forms of discrimination. In most cases, it is a direct consequence of legally established restrictions on access to certain rights and freedoms of individuals residing or staying on the TOTs. These restrictions include the inability to vote at local elections, receive general retirement benefits, restrictions on freedom of movement, restrictions on entrepreneurial activity, tax and banking, etc. Namely, according to the Law of Ukraine "On Creation of the Free Economic Zone "Crimea" and on Peculiarities of Exercising Economic Activity in the Temporarily Occupied Territories of Ukraine," individuals who have a registered place of residence on the temporarily occupied territory of Crimea, are considered non-residents in terms of taxation and customs formalities, and the income received from the TOTs is considered the foreign income. For example, when selling a movable property item – a car registered in Crimea – a person must pay 18% tax while other Ukrainian citizens only pay 5%. This Law restricts access to banking services, as the Crimean residents are only eligible to receive banking services if they have an IDP certificate.

4. One of the most common manifestations of discrimination against conflict-affected persons is the discrimination in the exercise of the right to social protection⁶. The right to social security and protection is one of the fundamental human rights, reflected in human rights treaties Ukraine is a party to. The right to pension is an indispensable element of social security and social protection. Moreover, the right to pension is enshrined in the Constitution of Ukraine which provides that “citizens have the right to social protection” and “pensions and other types of social payments and assistance that are the principal sources of subsistence, shall ensure a standard of living not lower than the minimum living standard established by law.” The right to pension also falls within the ambit of Article 1 of Protocol 1 to the European Convention on Human Rights, because it also generates a proprietary interest. Finally, in its jurisprudence, the European Court of Human Rights held that deprivation of pensions may reach the threshold to qualify as inhumane and degrading treatment prohibited under Article 3 of the European Convention on Human Rights.
5. The interference with the right to pension of IDPs and other conflict-affected persons is unlawful. Firstly, it is not prescribed by law: according to the Constitution of Ukraine, the right to pension may only be restricted by law, and the Cabinet of Ministers of Ukraine Resolution # 365, which regulates the payment of pensions to IDPs, is not a law by its

6 It is important to recall the interpretation of Article 26 as provided by the General Comment No. 18 and practice of the Committee. Firstly, the Human Rights Committee (Committee) in the General Comment No. 18 has established that the term “discrimination” in the context of the ICCPR refers to “any distinction, exclusion, restriction or preference which is based on any ground... or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.” Importantly, this provision precludes both negative and positive obligations of a state and the list of grounds is non-exhaustive. The Committee concluded that differentiation in treatment qualifies as discrimination, unless “it is reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant”. Secondly, Article 26 of the ICCPR “provides itself an autonomous right” and “is concerned with the obligations imposed on States parties in regard to their legislation and the application thereof.” This implies, that “when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory”. To this end, while the scope of Article 2 of the ICCPR is limited, Article 26 of the ICCPR is not only applicable to the rights set forth in it, but also to other rights. Thirdly, the Human Rights Committee has previously applied Article 26 to the economic, social and cultural rights. It is necessary to recall the case of *Zwaan-de Vries v. The Netherlands*, where the Netherlands claimed that Article 26 of the ICCPR overlaps with Article 2 of the ICESCR. The State argued that petitions under Article 2 and Article 9 of the ICESCR could not have been lodged within procedure under ICCPR. This was declined by the Committee which explicitly stated that “the provisions of Article 2 of the ICESCR do not detract from the full application of Article 26 of the ICCPR.” Therefore, the issue of discrimination in relation to the enjoyment of social rights can be also raised in the light of the Article 26 of the ICCPR, which, according to the Committee, “prohibits discrimination in law or in practice in any field regulated and protected by public authorities.”

nature. Secondly, such interference is not justified under any of the legitimate aims. Thirdly, the interference is disproportionate, because for many persons pension is not only the major source of income, but the sole source. Denial of their right to pension is depriving these persons of a dignified standard of living. Thus, there is differential treatment of unregistered IDP pensioners if compared to registered IDP pensioners, and differential treatment of IDP pensioners, both factual and registered, if compared to other pensioners in Ukraine. Such differential treatment is unjustifiable under any of the legitimate aims.

6. Different procedures for receiving pensions were introduced for the residents of the temporarily occupied Crimea and the city of Sevastopol and the occupied part of Donetsk and Luhansk oblasts.
7. To receive a pension, citizens of Ukraine residing on the occupied territory of Crimea and Sevastopol must contact the bodies of the Pension Fund of Ukraine (PFU) located on the Government-controlled territory and additionally submit documents issued by the authorized body of the Russian Federation that the person was not assigned a pension at the place of his/her registration in Crimea, as well as a personal declaration that the person is not a citizen of the occupying power⁷. Payment of pension starts/is renewed after the receipt of a pension file at the request of the PFU territorial bodies proving that the person was terminated or never allocated a pension at his/her place of registration. It leads to the disclosure of personal data of the recipient to the aggressor state. In addition, it should be noted that the payment of pension does not start until a hardcopy pension file is received by the PFU.
8. At the same time, the Government of Ukraine does not guarantee the residents of the TOTs of Donetsk and Luhansk oblasts the right to social and pension benefits. Rather, it encourages them to use the procedure for obtaining a pension which is valid only for the IDPs. That is, to be able to receive a pension earned legally during their life, such citizens are forced to move to the Government-controlled territory and get registered as the IDPs. It causes the discrepancies between the official statistics on IDPs and the real number of citizens who were forced to leave their homes because of the war and need support to get integrated into new communities on the Government-controlled territories.

⁷ <http://zakon3.rada.gov.ua/laws/show/1058-15/page11>

9. According to the Ministry of Social Policy of Ukraine, about 1,278,000 citizens entitled to a state pension resided on today's TOTs of Donetsk and Luhansk oblasts in 2014. As of June 2018, only 510 thousand IDP pensioners from Donetsk and Luhansk oblasts receive their pensions. It means that about 700 thousand pensioners on the TOTs do not receive their pensions from Ukraine. At the same time, according to the jurisprudence, most lawsuits that challenged the termination of the pension payment to the TOT residents were resolved in favour of the applicants.
10. As the TOT residents are not able to receive pensions, it may cause new waves of displacement or encourage them to "artificially" register as the IDPs to exercise their right to pensions. This can also be seen as a compulsion to move, which is contrary to the United Nations Guiding Principles on Internal Displacement.
11. Concerning pension payments for IDPs. The United Nations Guiding Principles on Internal Displacement (1998) prohibit discrimination against IDPs based on 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. However, additional discriminatory conditions for the payment of retirement benefits are currently set up for IDPs. For example, a pensioner who was registered as an IDP should periodically undergo the so-called identification procedure at an office of the Oshchadbank (Savings Bank) of Ukraine⁸. If a pensioner returns to the TOTs, the payment of his/her pension will be terminated. And if in the future the pension is reinstated, the unpaid amount of pension will not be returned⁹.
12. In fact, the additional conditions established for the IDPs are not applicable to all other pensioners of Ukraine, are discriminatory and do not meet the criteria of the necessity and proportionality of the restrictions imposed. In addition, they violate the Law of Ukraine "On Mandatory State Pension Insurance" as was established in numerous courts decisions, including by the Supreme Court of Ukraine¹⁰.

8 PJSC Oshchadbank (State Savings Bank of Ukraine) is the only bank through which the IDPs are entitled to receive social benefits and pensions.

9 According to CMU Resolution # 335 of 25 April 2018, social benefits and pensions that are not paid for the previous period should be recorded and paid later in line with the specific procedure approved by the Cabinet of Ministers of Ukraine. This procedure is not currently developed.

10 The Supreme Court in the case # 263/7763/17 held that the government cannot stop paying pensions to the IDPs because they do not reside at the place of their registration. The text of the decision is available at <http://www.reyestr.court.gov.ua/Review/72028927>

- 13.** In addition to official procedures established by the Government of Ukraine through individual Resolutions, these are the so-called "SSU lists" that are used as the reasons for termination of pension payments. According to the CMU Resolution # 365, all types of social benefits and the IDP pension can be suspended on the basis of information from the SSU that a person has returned to a permanent place of residence on the TOTs. Lack of any approved procedures for the compilation, verification and provision of such information has led to significant abuses and unwarranted termination of payments. According to the NGO "Donbas-SOS," pensions and social benefits to 460 thousand IDPs were suspended due to the so-called "SSU lists" in early 2016, and to 200 thousand IDPs more, in 2017¹¹.
- 14.** In other words, the state may arbitrarily, in violation of law, discontinue the payment of IDP pensions on discriminatory grounds, although the pension is usually the only means of subsistence of the elderly.
- 15.** The report submitted by Ukraine includes information about legislative measures which aim to ensure protection against discrimination. However, as the Human Rights Committee (Committee) noted in the General Comment No. 18, the state has not provided information if there are any instances of discrimination in Ukraine and concrete steps towards eliminating it. Documentation of some of the recently-introduced norms might be useful to observe the general trends, however, this does not reflect the realities. Moreover, it should be emphasized, that it is very unfortunate that Ukraine failed to include in the report information concerning (non)discrimination of IDPs and positive developments in this area, including information about Draft Law # 6692 which has not been included to the Parliament's agenda for consideration and voting for more than one year. In the context of the armed conflict, the challenge of ensuring the rights of conflict-affected persons, including IDPs, is one of the most disturbing and urgent ones.
- 16.** Draft Law # 6692 provides several important changes. The first proposed change concerns the payment of previously unpaid pensions. To date, the law sets a limit of three years of back-payments if a pensioner failed to apply for pension for the first time. Pensions which have not been received due to the fault of the Pension Fund, are paid without any time limit. Currently, there is no separate rule that back-payments of pensions which were not received due to the negative consequences of armed conflict,

¹¹ <https://dnews.dn.ua/news/592592>

temporary occupation, situations of generalized violence, human rights violations and natural or man-made emergencies. Draft # 6692 will fulfil this gap. Secondly, the loss or damage to documents is one of the most common difficulties that the IDPs and other conflict-affected persons face. Draft Law # 6692 stipulates that in such cases, the pension shall be calculated on the basis of data from the register of insured persons and appointed on the basis of data available in the Pension Fund of Ukraine. Moreover, according to the Draft Law # 6692, the lack of verification of such documentation should not be the reason for denial of the right to pension. Thirdly, Draft Law # 6692 provides a mechanism that allows individuals who live in NGCA to exercise the right to a pension. Therefore, the Draft Law # 6692 separates the right to a pension from the requirement of IDP Certificate and reduces the burden, both physical and administrative, imposed on conflict-affected pensioners. The Draft Law # 6692 would eliminate discrimination by ensuring that all Ukrainian citizens, regardless of their residency or requirement of IDP certificate, enjoy their constitutional right to pension.

RESTRICTION OF THE FREEDOM OF MOVEMENT (ARTICLE 12 OF THE COVENANT)

17. According to Article 33 of the Constitution of Ukraine, anyone who legally resides in Ukraine is guaranteed freedom of movement, free choice of place of residence, the right to freely leave the territory, with the exception of restrictions established by law. A citizen of Ukraine cannot be deprived of the right to return to Ukraine at any time.
18. After the annexation of Crimea and the beginning of the armed aggression of the Russian Federation, an administrative border with the occupied territory of the Autonomous Republic of Crimea was established. Later, the contact line was drawn up to separate the territories that are temporarily outside the control of the Government of Ukraine from the Government-controlled territories in Donetsk and Luhansk oblasts¹². Due to the ATO (later – Joint forces operation, JFO), the temporary occupation of the parts of Donetsk and Luhansk oblasts and Crimea, Ukraine introduced an array

12 In accordance with the Law of Ukraine "On the Peculiarities of State Policy on Ensuring Ukraine's State Sovereignty over Temporarily Occupied Territories in Donetsk and Luhansk Oblasts" adopted by the Verkhovna Rada of Ukraine in early 2018, this territory was recognized as temporarily occupied by the Russian Federation.

of restrictions on the freedom of movement. Some of them are necessary and substantiated (for example, establishment of the checkpoints and the increased control over the movement of persons from/to the TOTs) and cannot be considered a violation of the provisions of Article 12 of the Covenant. At the same time, additional restrictions imposed by Ukrainian authorities may be regarded as disproportionate and unjustified interference with the exercise of freedom of movement, which is guaranteed by the Constitution of Ukraine. According to the official data of the State Border Guard Service of Ukraine, the number of crossings of the contact line increases yearly: 8 569 million, in 2016; 11 842 million, in 2017; 13 620 million, in 2018¹³.

- 19.19. A lot of problems are associated with crossing of the administrative border with Crimea and the contact line in Donetsk and Luhansk oblasts. First and foremost, this is the absence (official ban) of passenger traffic through an administrative border/contact line that was discontinued (in 2014 and 2015 respectively). Evidently, the termination of passenger traffic has a negative impact on maintenance of ties with residents of the occupied territories. In addition, it forces people who cross the administrative border/contact line to spend a significant amount of money to get from the settlements located on the TOTs to the Government-controlled territory.
20. Another problem encountered by persons crossing the administrative border/contact line is carrying personal belongings. To date, there is an exhaustive list of things that are allowed for transfer. In turn, as the list is exhaustive, many items – including food (for example, ketchup, grapes), non-food consumer goods (for example, water heaters, boilers), solid household fuel, medical items – banned to carry. The procedure for transferring personal belongings in case of returning to their permanent place of residence on the temporarily occupied territories is not regulated – and, thus, impossible. The same is true for the procedure of moving the monuments, bodies, ashes of the deceased to the places of burial; the procedure of moving from the TOTs the goods that can be considered as having historical and cultural value (books, icons, paintings, etc.); procedure of moving animals, etc.
21. There are a lot of issues regarding the crossing of administrative border/contact line with children, especially when entering the TOTs. The fact is that the Rules of Crossing the State Border of Ukraine by the Citizens of Ukraine (hereinafter – the Rules) are applicable. According to the Rules, children under 16 y.o. may enter the TOTs with

¹³ <https://app.powerbi.com/view?r=eyJrJoiYTdiM2VIOGEtYTdlZi00OWI4LTlhNTgtZGFhNWnkMGZiMmZjliwidCI6IjdhNTE3MDMzLTE1ZGYtNDQ1MC04ZjMyLWE5ODJmZTBhYTEyNSIsImMiOiJh9>

the consent of both parents or accompanied by them (or accompanied by persons authorized by the parents provided that the necessary documents are available). If one parent of a child is not travelling with a child when crossing a checkpoint, it is necessary to provide a notarized consent of this parent (or a court decision or other documents specified in the Rules). Therefore, families with children that leave the TOTs face problems with returning to the TOTs if one of a child's parents does not give his/her consent to leave or entry.

22. In addition to common problems of crossing the administrative border and the contact line, there are some specific problems¹⁴.

CROSSING THE ADMINISTRATIVE BORDER WITH THE TEMPORARILY OCCUPIED TERRITORY OF CRIMEA

23. According to the Law of Ukraine "On Creation of the Free Economic Zone "Crimea" and on Peculiarities of Exercising Economic Activity in the Temporarily Occupied Territories of Ukraine" and the Law of Ukraine "On Ensuring Civil Rights and Freedoms, and the Legal Regime on the Temporarily Occupied Territory of Ukraine," the Cabinet of Ministers of Ukraine adopted the Procedure for entry into and exit from the temporarily occupied territory of Ukraine, approved by CMU Resolution # 367 of 4 June 2015 (hereinafter – the Procedure).

24. According to the above-mentioned regulations, an interim border control is introduced at the administrative border on the occupied Crimea, and people can enter into the temporarily occupied territory of Ukraine and exit from it through three checkpoints (Kalanchak, Chaplynka, and Chonhar). In addition, there are restrictions on carrying personal belongings and special conditions for crossing the administrative border by citizens of Ukraine and foreigners.

25. For example, when entering/leaving the territory of Crimea, citizens can carry personal belongings defined in Article 370 of the Customs Code of Ukraine¹⁵. Crimea residents constantly face problems of carrying their personal belongings, since

¹⁴ More details available at: http://vpl.com.ua/wp-content/uploads/2019/02/2018_Feb-Dec_EECP_Report_ENG.pdf

¹⁵ <https://zakon.rada.gov.ua/laws/show/4495-17#n3182>

the list of permitted items is obsolete and does not meet real needs of citizens (for example, the list does not include household appliances, furniture, etc., but allows for carrying binoculars and typewriters). In addition, it does not provide regulation to carriage of domestic animals, coffins (ashes), wheelchairs etc. It should be noted that the provisions of the Customs Code of Ukraine regulate transportation of goods by citizens of Ukraine across the state border. Therefore, applying the customs regime that operates between Ukraine and foreign states (in particular, with the Russian Federation) to carriage of items inside Ukraine seems to be unjustified.

26. Yet another issue is the process of constructing/refurbishing the buildings of checkpoints at the administrative border. Citizens crossing the administrative border and the NGOs that monitor operation of the checkpoints reported the lack of basic sanitary and hygienic conditions, healthcare opportunities, waiting areas and well-established infrastructure for safe and comfortable movement through the checkpoints. In addition, Kherson oblast is the first region where the Crimeans seek administrative services – for example, obtaining a passport of a citizen of Ukraine, a passport for traveling abroad, registration of birth or death, etc. Therefore, there was a plan to construct an administrative service centres next to the checkpoints¹⁶. The Government ordered to allocate UAH 105,983,571 from the reserve fund of the state budget¹⁷ to provide adequate conditions and improve the quality of service provision for citizens who cross the administrative border of Kherson oblast with the temporarily occupied territory of Crimea and prevent threats to health, provide sanitary and epidemiological well-being of the population, prevent medical and biological natural emergencies. The construction works were to be completed by the end of 2018. However, they never started, as evidenced by monitoring of human rights defenders¹⁸. According to the Ministry of Finance of Ukraine, money for these purposes cannot be allocated in 2019¹⁹. Thus, the Government's decisions remain unfulfilled, and arrangement of the checkpoints remains unchanged.

16 Decision of the National Security and Defense Council of Ukraine (NSDC) "On Strengthening Control over Entry into Ukraine, Exit from Ukraine of Foreigners and Stateless Persons, Complying with the Rules of Stay on the Territory of Ukraine by Them" of 10 July 2017.

17 Resolution of the Cabinet of Ministers of Ukraine # 584 "On the Allocation of Funds for the Construction of Temporary Checkpoints on the Temporarily Occupied Territory of Ukraine for Automobile Traffic and Service Areas around Them" of 4 July 2018.

18 <https://crimeahrg.org/uk/oblashtuvannya-kpvy-na-adminkordoni-z-krimom-za-rahunok-byudzhetu-ne-zdiysneno-monitoring/>

19 <http://atr.ua/news/181964-v-2018-godu-kabmin-ne-vydelil-obesannye-106-mln-na-obustrojstvo-kpvy-na-admingranice-s-krymom>.

27. The Procedure also established restrictions on the crossing of the administrative border for the citizens of Ukraine. In particular, children under 16 y.o. can only leave the TOT if they have their internal or foreign passport and accompanied by a parent (adoptive parent, guardian or another legal representative) or accompanied by other persons authorized by a parent (adoptive parent, guardian or another legal representative). However, given that temporary occupation lasts for almost five years, the number of children who need to obtain passports is increasing, but they can only travel to Ukraine's mainland to receive such services if they already have such documents. It violates the principle of citizenship and prevents the movement of children who are Ukrainian citizens from the temporarily occupied territory of Crimea if they do not have a passport.

CROSSING THE CONTACT LINE IN DONETSK AND LUHANSK OBLASTS

28. Certain restrictions on crossing the contact line are caused by the fact the contact line in Donetsk and Luhansk oblasts was established and enshrined in the Minsk agreements, and the respective regime of its crossing from both sides.

29. The length of the contact line is 467 km. In total, five checkpoints were set up on the contact line – four in Donetsk oblast and one (pedestrian) in Luhansk oblast. This number of checkpoints is critically insufficient. At the same time, according to the State Border Guard Service of Ukraine, the number of crossings of the contact line in 2018 exceeded 13 million. In addition, the checkpoints still lack adequate infrastructure on both sides. In summer season, they operate from 6:00-20:00, in winter, from 8:00-17:00, in autumn and spring, from 7:00-18:30.

30. The NGOs that conduct regular monitoring of situation at the checkpoints in Donetsk and Luhansk oblasts record significant queues. One of the reasons was the reconstruction of the checkpoints on the GCA side in 2018. Activists also record systemic violations on the side of illegal armed groups – they delay civilians and only let them pass just before the closure of checkpoints on the GCA side. This causes situations where people are caught up between checkpoints in “no man's land” under the threat of shelling and spending the night in the middle of nowhere.

- 31.** According to UN OCHA, at least 50 people died or were seriously injured on the contact line in 2018. In addition, five persons were killed when they crossed the contact line in January 2019 because of shelling and diseases²⁰.
- 32.** According to the Law of Ukraine "On Peculiarities of State Policy on Ensuring the State Sovereignty of Ukraine on Temporarily Occupied Territories in Donetsk and Luhansk oblasts," the Cabinet of Ministers of Ukraine should approve a new Procedure for entry/exit of persons, moving goods to/from temporarily occupied territories in Donetsk and Luhansk oblasts. However, as of 1 February 2019, this Procedure has not been adopted yet²¹.
- 33.** Another critical problem is that individuals have to apply for permits to cross the contact line. It should be noted that under the permit system, a person has to receive a special "pass" from the SSU to have a right to cross the contact line (from/to the TOTs). Such a permit de jure should not have a term of validity, but in practice it is only valid for one year, and later a person should re-apply for it. To receive a permit, a person should fill in an electronic or a paper application and submit it to a specified coordination centre or coordination groups. This procedure is inaccessible and challenging for the elderly and people living on the TOTs in Donetsk and Luhansk oblasts. Due to lack or limited mobile communication in certain areas, contacting a coordination centre or coordination groups is a challenge. In addition, the NGOs detect numerous problems in the operation of the website "Register of permits for movement of persons in the ATO area"²² where persons can submit their documents to receive a permit. For the most part, these are technical issues – for example, suspended operation for a long time, impossibility of making changes after filing an application, the impossibility of saving the previous application to re-submit it for the next period if it was not re-submitted in time. These technical problems lead to situations where individuals wishing to cross the contact line may be refused to cross. Also, it provokes numerous corruption risks in the course of passing the checkpoints.
- 34.** The Resolution of the Cabinet of Ministers of Ukraine # 99 "On Approval of the Procedure for Movement of Goods to an Anti-Terrorist Operation Area" of 1 March 2017 and the Order of the Ministry of TOTs of Ukraine # 39 of 24 March 2017 approved the

²⁰ <https://reliefweb.int/report/ukraine/ukraine-checkpoints-humanitarian-snapshot-14-january-2019>

²¹ As the Procedure has not been adopted yet, the Rules of the Order of the First Deputy Head of the Anti-Terrorist Centre of the SSU (who is the ATO Commander in Donetsk and Luhansk Oblasts) # 222 or "On Approval of the Temporary Procedure for Control of the Movement of Persons through the Contact Line in Donetsk and Luhansk Oblasts" of 14 April 2017, http://zakon.rada.gov.ua/rada/show/v222_950-17?lang=uk

²² <https://urp.ssu.gov.ua/>

List and Volume of Goods Permitted for Movement, in particular, through the contact line. This Procedure provides for the movement of goods, the total invoice value of which does not exceed the equivalent of UAH 10,000 and the total weight of which does not exceed 75 kg per person in accordance with the established List.

REGISTRATION OF BIRTHS AND DEATHS ON THE TEMPORARILY OCCUPIED TERRITORIES OF UKRAINE, ISSUANCE OF IDENTIFICATION DOCUMENTS (ARTICLE 16, PART 2 OF ARTICLE 24 OF THE COVENANT)

- 35.**Article 16 in connection with part 2 of Article 24 states that everyone, including newborns, shall be recognized as a person before the law. For children it means being registered at birth and receive a name. Without a birth certificate many services may be unavailable, including care/medical assistance for children with special needs, access to education. Difficulties may arise with proving the nationality.
- 36.**For Ukraine, the issue of birth registration became and remains acute with regard to residents of non-government-controlled territories of Donetsk and Luhansk oblasts as of November 2014, when as per the governmental resolution all state bodies ceased performing their functions. Administrative procedure became unavailable and all the requests were processed through the regular court proceedings related to confirmation of facts. Since February 2016 the court consideration was simplified, and all the applications are expected to be considered on the day of application. The number of birth certificates issued under this simplified procedure as of 31 July 2018²³ constitutes 20,891 for births that took place in Donetsk and Luhansk oblasts, while the number of actual births there is estimated at 62,560²⁴. Therefore, over 41 thousand children have no documents issued by a recognized state.

²³ UN briefing note on birth registration quoting the Ministry of Justice data. https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/briefing_note_birth_registration_update_02.08.18.pdf

²⁴ Data from open sources from de facto authorities in self-proclaimed republics in Donetsk and Luhansk oblasts

- 37.** Difficulties of the simplified judicial procedure vary and include several issues. First of all, it is duration. Although declared to be available within one day, it still entails multiple steps, which prolongs time between the first visit to a registration authority and actual issuance of a birth certificate. To apply to a court, an applicant has to approach a registration authority for a rejection to issue a birth certificate based on documents issued by de facto authorities. With this rejection the applicant goes to a court. Even though the court has to consider an application on the same day, the judges usually have their schedules already packed. Due to electronic distribution of cases between judges, a judge assigned maybe on an annual leave/sick leave or have many cases scheduled for the day. The nearest available time slot maybe the same day or within next several days or weeks. When the court decision is obtained, an applicant shall approach the registration authority, which issues a birth certificate on the same day. On average, the time span between the first approach to the registration authority and issuance of a birth certificate constitutes two to six weeks.
- 38.** Although under the law on court fees applicants in cases related to confirmation of facts that took place at NGCA/TOTs shall be exempted from court fees, monitoring of NGOs reveals that in up to fifty per cent of cases applicants pay court fees (over UAH 300) either on the judges request, or simply do not apply for the exemption in order to speed up the consideration (since exemption is considered by a judge and not granted automatically). Apart from the court fee, applicants spend money on reaching the destination (from their place of residence, across the contact line, to the town/city where the court is located, and back. The average cost of a round trip is UAH 1,000) and for their stay while waiting for the decision and issuance of a birth certificate (costs may vary).
- 39.** Possibility to access the procedure is not universal for residents of NGCA. Those who cannot cross the contact line for multiple reasons (single parents who cannot leave their children; low-income families who have no money to go to the government-controlled areas of Ukraine; parents who cannot come to the government-controlled areas due to the fear of persecution, etc.).
- 40.** Therefore, the current court procedure is not easily accessible and simplified. It is of utmost importance that the government elaborates administrative procedure, as stipulated in the Law of Ukraine "On Peculiarities of State Policy on Ensuring Ukraine's State Sovereignty over Temporarily Occupied Territories in Donetsk and Luhansk

Oblasts." In particular, the Law exempts birth and death related documents issued by de facto authorities from the general rule of non-recognition of documents issued at those territories. According to the Law, documents confirming facts of birth and death shall be attached to applications for issuance of birth/death certificates at the government-controlled areas. However, the government insists that additional procedural norms are necessary (but they were not adopted since February 2018 when the Law entered into force).

41. Issues faced by the residents of the temporarily occupied territory of Crimea when registering acts of civil status are identical to the problems of residents of the temporarily occupied territories of Donetsk and Luhansk oblasts. However, there is no legal requirement to develop a separate administrative procedure for such group of citizens that puts them in an unequal situation with other citizens. The births and deaths on temporarily occupied territories of the Autonomous Republic of Crimea or temporarily occupied territories of Donetsk and Luhansk oblasts must be registered in administrative extrajudicial procedure, but they are not. A simplified judicial procedure should be an alternative to administrative procedure for cases where there are justified doubts or when the information submitted by applicants is not sufficient.
42. In addition to the problems with obtaining documents confirming births and deaths on the TOTs, there are certain problems with obtaining a passport of a citizen of Ukraine for persons who reside or have a registered place of residence on the TOTs. The key problem faced by such persons is the need for a so-called identification. When a passport of a citizen of Ukraine is produced, the information about a person is entered into the Unified State Demographic Register (USDR). Therefore, when a passport is produced, a person is identified – for it, the submitted information (data), including biometric, is compared with available information about this person in the registers, card indices, databases, etc. The identification procedure, both for the IDPs and the TOT residents, is complicated and sometimes impossible, because almost all the paper files of the Ministry of Internal Affairs and the State Migration Service remained on the temporarily occupied territories. If a person is not identified, another procedure is performed – establishing a person's identity. Usually this procedure involves interviewing at least three family members and the applicant's neighbours who can confirm his/her identity). Sometimes it is extremely difficult for an applicant to ensure that such witnesses arrive to the respective authority, especially if they are permanently

residing on the TOTs because the travel from the TOTs is expensive and long). There are cases when family members cannot leave the TOTs because of security risks, or an applicant has only one parent. In case of neighbours, an applicant must additionally provide documents confirming that they reside on the same street and in the same house. Such documents are issued by illegal de facto authorities on the TOTs and are not recognized on the territory of Ukraine.

- 43.** In addition, there is no definite list of documents that are necessary and sufficient for such identification, and therefore, there are cases of refusal to issue a passport of a citizen of Ukraine to the TOT residents, or passport production is significantly protracted, which affects a person's ability to enjoy his/her rights and freedoms.
- 44.** When obtaining passports, the IDP children and children residing on the TOTs cannot have their registered place of residence on the TOTs marked in their passports. According to the national legislation²⁵, the place of residence of a person is subject to mandatory registration. Usually, the place of residence of children is registered with their parents. However, if the parents are registered on the TOTs, the effective legislation forbids to register the place of residence of children on the TOTs. In this case, the IDP children and children residing on the TOTs face barriers in enjoyment of their rights and freedoms and additional guarantees provided by the state to conflict-affected children. In addition, it prevents them from exercising certain rights in the future, in particular, the right to participate in elections.

COLLECTION OF PERSONAL DATA OF IDPS AND RESIDENTS OF THE TEMPORARILY OCCUPIED TERRITORIES (ARTICLE 17 OF THE COVENANT)

- 45.** According to Article 17 of the Covenant, no one shall be subjected to arbitrary or unlawful interference with his/her privacy, family, home or correspondence, nor to unlawful attacks on his/her honour and reputation. In the light of international human rights law, illegal collection and dissemination of personal data may be regarded as an unlawful interference with the exercise of the right to privacy. In accordance with

²⁵ Law of Ukraine "On Freedom of Movement and Free Choice of Place of Residence in Ukraine."

national law, interference with the constitutional right of a person to private and family life by collecting, storing, using and disseminating confidential information about a person without his/her consent is permitted if it is provided for by law, and only in the interests of national security, economic welfare and human rights protection.

46. Persons registered as the IDPs are regularly subjected to interference with their privacy in terms of the ways their personal data is collected and disseminated. According to Article 12 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons," if an IDP returned to the abandoned place of permanent residence, it is one of the reasons to cancel his/her IDP certificate. Pursuant to the Law, this is the data from the relevant state registries and data obtained during the exchange of information with the state authorities that can provide reasonable grounds to believe that an IDP has returned to the abandoned place of residence. That is, the authorities exchange personal information about a person to find out whether there are grounds to cancel his/her IDP certificate without his/her consent. It is important to note that the cancellation of the IDP certificate leads to the termination of payment of all types of state benefits and pensions to this person, and also deprives him/her of the possibility to appropriately exercise other rights.
47. An example of the exchange of personal information on IDPs between different authorities is the so-called social payments verification procedure. In 2016, amendments were made to several laws, including the Budget Code of Ukraine, the Law of Ukraine "On Banks and Banking" that authorized the authorities to collect and exchange personal data of social benefit recipients – in particular, the IDPs – including the right to have access to banking information. Later, CMU Resolution # 136 of 18.02.2016 was adopted. In the context of its enforcement, many IDPs repeatedly faced situations of the suspension of payment of pensions based on the recommendations of the Ministry of Finance. According to this Resolution, the Ministries, other national and local executive authorities, local governments, the National Bank, the Pension Fund of Ukraine, funds of mandatory state social insurance, enterprises, institutions and organizations, banks and other financial institutions regardless of the form of ownership submit financial information, including personal data, to the Ministry of Finance. The Ministry of Finance verifies and monitors this data, and if it contradicts with the information based on which the state payment was granted (extended), the Ministry of Finance recommends suspending or terminating such payments. In 2017, the Ukrainian Parliament Commissioner for Human Rights challenged this mechanism

of payment verification to the Constitutional Court of Ukraine. The latter held that the amendments to the legislation that enabled the Ministry of Finance to access personal data – in particular, data of the IDPs as recipients of social benefits, pensions, subsidies, etc. – without obtaining consent of individuals were made in violation of the Constitution. In its decision of 11 October 2018, the Constitutional Court established that such a method of obtaining information is an interference with the constitutional right of a person to privacy²⁶.

- 48.** Regular verifications of the IDPs for almost three years have resulted in numerous criminal prosecutions of IDPs “for providing false data” to be eligible to receive payments to cover housing and utility costs, allegedly in violation of the procedure for allocating such payments as approved by CMU Resolution # 505 of 1 October 2014²⁷. In accordance with the CMU Resolution, monetary aid is provided to internally displaced persons as long as they and their family members do not have the adequate housing on the Government-controlled territory and have no money on their savings accounts in the amount exceeding 25 subsistence minimums established for able-bodied persons. An IDP must specify these details when applying for a targeted social payment.
- 49.** Since 2016 – when the system of social payments verification was launched – the verdicts against persons who were held accountable for not specifying this information (or specifying false information) to receive IDP payments over 2014-2016 started to appear in the United State Register of Court Decisions (USRCD). In most cases, they failed to specify having savings accounts that exceeded the abovementioned threshold²⁸.
- 50.** As of 1 February 2019, over 100 such decisions were issued. According to the USRCD data, the IDPs are usually prosecuted by law enforcement agencies according to part one of Article 190 of the Criminal Code of Ukraine (fraud or coming into possession of another person’s property or acquisition of the right to property by deceit or abuse of trust). In addition, the court sentences also refer to Article 358 of the Criminal Code of Ukraine (counterfeiting of documents, seals, stamps and templates, sale or use of counterfeit documents, seals, stamps). That is how the courts consider applications for IDP payments without specifying the possession of savings accounts and housing.

²⁶ http://ccu.gov.ua/sites/default/files/docs/7-p_2018.pdf

²⁷ <https://zakon.rada.gov.ua/laws/show/505-2014-%D0%BF>

²⁸ In accordance with the CMU Resolution # 505, if a person has more money on his/her savings account than 10 subsistence minimum established for able-bodied persons – amounting to about UAH 13,000 or USD 470 – s/he is not eligible to receive the targeted IDP social payment.

51. It is noteworthy that almost all the sentences are indictments, even if a person found himself or herself guilty and returned all money paid to him/her before the sentence was issued. That is, criminal liability comes even when actual damage to the state has been reimbursed. It is also worth noting that according to the USRCD, the sentenced persons have never been prosecuted earlier.
52. The most common criminal punishment in this category of cases is a fine, the amount of which ranges from UAH 510 to UAH 1,020. At the same time, certain sentences also entail restriction or deprivation of liberty for a term up to 1 year. However, it should be noted that the courts also released certain accused from the criminal liability in accordance with the Law of Ukraine "On Amnesty in 2016." In addition to paying a fine, the important consequence of criminal prosecution is a criminal record, which is a significant barrier to employment (for example, in the civil service or in law enforcement agencies).

FREEDOM OF CONSCIENCE AND RELIGION ON THE TEMPORARILY OCCUPIED TERRITORIES OF UKRAINE (ARTICLE 18 OF THE COVENANT)

53. Ensuring the right to freedom of thought, conscience and religion is one of the priority responsibilities of the state. Ukraine as a signatory to the International Covenant on Civil and Political Rights is obliged to provide all persons with the rights and freedoms of religion, as well as to ensure effective legal protection for the exercise of this freedom. After the temporary occupation of the part of its territory, Ukraine has not derogated from the obligations specified in Article 18 of the Covenant. However, the state of Ukraine cannot currently ensure the enjoyment of this freedom on the temporarily occupied territories. At the same time, the Russian Federation is committing open crackdown on the freedom of conscience and religion on the TOTs in Crimea and implements discriminatory policies and outright oppression of representatives of the Crimean Tatar minority. The occupying power in Crimea at the legislative level tries to eliminate any religious institutions that are not affiliated with the occupying power structures or are not controlled by it from the peninsula²⁹.

29 More details on fulfillment of the freedom of religion and thoughts on the temporarily occupied territory of Crimea is available at: https://crimeahrg.org/wp-content/uploads/2018/04/Religion_EN.pdf?fbclid=IwAR05NZ26EAO1whxJiKq7UQju3NQUn2kB-YOWAnmCSbQUV49KTS3lqzxSGl8

- 54.** The de facto authorities used various forms of pressure – a series of illegal searches, intimidation and attempts of displacement – to establish cooperation with the leadership of the Spiritual Administration of Muslims of Crimea and the Jewish community in Crimea, which was headed by a Rabbi who is close to the President of the Russian Federation after the previous Rabbi was pushed out of the peninsula because of his protest against the occupation of Crimea. As far as Christian religious organizations are concerned, only the Orthodox Church of the Moscow Patriarchate was able to easily re-register and avoid a conflict with the de facto authorities.
- 55.** Another form of violation of the right to freedom of thought, conscience and religion by the occupation authorities in Crimea at the legislative level is the use of the so-called anti-extremist legislation of the Russian Federation. It is particular in Crimea that this legislation is used to prosecute civic activists for alleged membership in religious organizations and representative bodies of the Crimean Tatar people recognized as extremist by Russian legislation (for example, Hizb ut-Tahrir³⁰, Mejlis of the Crimean Tatar people).
- 56.** The Head of the Mejlis of the Crimean Tatar people Refat Chubarov and his two deputies, as well as the leader of the Crimean Tatar people Mustafa Dzhemilev suffered criminal prosecution on the fabricated cases. At least five people were held criminally liable and over ten persons brought to administrative liability in the “3 May” case (an attempt to meet Mustafa Dzhemilev on the administrative border on 3 May 2014). The de facto authorities tend to fabricate politically motivated collective criminal cases – Kashka Wedgie case, Oleksandr Steshenko case – 30 persons in Crimea were deprived of their liberty for alleged membership in Hizb ut-Tahrir³¹.
- 57.** The persecution for religious reasons is a blatant violation of the freedom to have or to accept religion or beliefs of a person's choice and the freedom to practice religion and beliefs. It also significantly reduces the number of religious communities that are sometimes forced to terminate their activities.
- 58.** As the state of Ukraine does not control the part of its territory occupied by the Russian Federation, the implementation of national policy on ensuring freedom of thought, conscience and religion is impossible on the territory of Crimea. However, the state can

30 Hizb-ut-Tahrir (full name is Hizb-ut-Tahrir al Islami, Islamic Party of Liberation in the Arabic) is an international pan-Islamist political party founded in 1953 in Eastern Jerusalem by Taqiuddin al-Nabhan, a judge of local Shariat appeals court. The activities of Hizb-ut-Tahrir are prohibited because the party was declared a terrorist organization, <http://www.fsb.ru/fsb/npd/terror.htm>

31 <http://krymsos.com/reports/analitichni-zviti-po-krimu/porushennya-mizhnarodnogo-gumanitarnogo-prava-ta-prava-krimskikh-tatar-na-samoviznachennya-v-okupovanomu-krimu/>

take measures to provide support to people who have suffered aggressive policies of the Russian Federation, as well as members of their families.

59.In 2018, the CMU adopted a Resolution³² mandating the Government to pay financial aid to protect and ensure the rights and interests of persons deprived of liberty by illegal armed formations, the occupation administration and/or the authorities of the Russian Federation on temporarily occupied territories of Ukraine and/or on the territory of the Russian Federation due to civic or political activities of such persons, as well as to provide support to such persons and members of their families, including the reimbursement of expenses related to visiting them. Therefore, the state of Ukraine only provides financial aid to those individuals who were deprived of their liberty due to their civic and political activities. Persons who suffered harassment on the part of the Russian Federation because of their affiliation with religious groups are not entitled to this financial aid, although they are political prisoners in the sense of PACE Resolution 1900 (2012). In addition, Ukrainian law enforcement authorities should investigate the facts of persecution of persons for political reasons.

FREEDOM OF PEACEFUL ASSEMBLY (ARTICLE 21 OF THE COVENANT)

60.Freedom of peaceful assembly (unarmed gatherings, rallies, campaigns, demonstrations, etc.) is a contemporary social phenomenon that appeared and developed in the countries along with democratic transformations. Freedom of assembly requires the protection on the part of civil society and authorities that protect their countries from the establishment of authoritarian man-hateful political regimes. In an armed conflict with the Russian Federation, on the verge of peaceful life and seeking security from artillery shelling in the shelters, the dichotomous conflict between freedom and security is particularly acute.

32 CMU Resolution # 328 of 18 April 2018 "On Approval of the Procedure for using the funds of the State Budget allocated for the implementation of measures to protect and ensure the rights and interests, social rehabilitation of persons deprived of liberty by illegal armed formations, the occupation administration and/or the authorities of the Russian Federation on the temporarily occupied territories of Ukraine and/or on the territory of the Russian Federation because of civic or political activities of such persons, as well as provide support to such persons and members of their families, including reimbursement of expenses related to visiting them, provide persons deprived of liberty and members of their families with legal aid, healthcare and social services, payment Levko Lukianenko state stipends."

- 61.** Freedom of assembly is guaranteed by the Constitution of Ukraine and regulated by the provisions of numerous laws and the Decision of the Constitutional Court of Ukraine # 4-пн/2001 concerning notification of assemblies in advance. The International Covenant on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Convention on the Elimination of All Forms of Racial Discrimination, the Framework Convention for the Protection of National Minorities and the Convention on the Participation of Foreigners in Public Life at Local Level are part of the national legislation and specify the international obligations of Ukraine to guarantee freedom of assembly for everyone under its jurisdiction. According to the Law of Ukraine "On Implementation of Decisions and Application of the Case Law of the European Court of Human Rights" and the Code of Administrative Procedure of Ukraine, the ECtHR decisions on the freedom of assembly is a source of law in Ukraine, and Ukrainian courts must take its case law into account in their decisions.
- 62.** At the same time, in the conflict area (Donetsk and Luhansk oblasts) citizens constantly face different legal regimes, including the regime of the ATO area, the special order in the security areas adjacent the ATO area, legal regime of the martial law, state border regime, the border regime, the regime of crossing the state border and temporarily occupied territories. Each of these regimes contains a number of specific restrictions that can be applied to citizens, including restrictions on the right to freedom of assembly. Most policies are regulated at the level of by-laws and sectorial documents. At the same time, the citizens never know what type of legal act would apply to any situation. It leads to the possibility of abuse of authority at the grass-roots level and causes restrictions of the rights.
- 63.** The Law of Ukraine "On Peculiarities of Public Policy on Ensuring Ukraine's State Sovereignty over Temporarily Occupied Territories in Donetsk and Luhansk Oblasts" adopted in February 2018 does not provide regulation to the protection of rights and freedoms in the context of special regimes related to the armed conflict. Therefore, the similar procedures should apply to the Government-controlled areas of Donetsk and Luhansk oblasts as throughout the entire country.
- 64.** On 21 May 2015, the Verkhovna Rada of Ukraine adopted the Resolution # 462-VIII and the statement "On Ukraine's Derogation from Certain Obligations Set Forth in the International Covenant on Civil and Political Rights and the Convention for the

Protection of Human Rights and Fundamental Freedoms.” The document refers to the derogation of Ukraine from a number of international human rights commitments in certain areas of Donetsk and Luhansk oblasts of Ukraine until the complete cessation of the armed aggression of the Russian Federation, restoration of the constitutional order on the occupied territory of Ukraine. According to the document, the Anti-Terrorist Centre of the SSU determines the boundaries of the territories where the derogation from certain international obligations is in effect with regard to the ATO. In this respect, it should be emphasized that the Ukrainian Parliament did not declare a derogation from Article 21 of the International Covenant on Civil and Political Rights and Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms that refers to an obligation to guarantee freedom of assembly.

65. However, at the practical level, the freedom of assembly is restricted in violation of the Constitution. For example, on 11 September 2014, the Head of Donetsk border unit of Eastern Regional Directorate of the State Border Guard Service sent a different version of the “Supplementary Regime Restrictions Introduced by the Decision of the ATO Leadership Providing the Defence of Ukraine in Mariupol Direction” to the Head of Donetsk Oblast State Administration, as it included Pershotravnevyi district, the villages of Zaichenko and Pionerske and the very city of Mariupol. In the letter to which this document was attached the sender requests to task the heads of relevant local self-government bodies and law enforcement bodies to impose and enforce the specified restrictions. Since then, officials of Mariupol City Council started systematically referring persons who wanted to notify the authorities of their intent to hold an assembly to the local Joint Centre for Civil-Military Cooperation of the Armed Forces of Ukraine. The military servants of the Centre require these persons to fill in a template detailing the information about a planned event and confidential information of the organizer, and then wait for a phone call that would either authorize or ban an assembly. It was the command of the operational tactical group “Mariupol” that was making such decisions earlier. Then, the decisions were made by the command of the operational tactical group “Donetsk” that replaced “Mariupol.” However, there is no public document that regulates such a procedure. The implementation of the permissive order of holding assemblies in Mariupol is a continuation of the Soviet practice of restricting the protest activity of the population. It is also the result of hesitation of local authorities to file lawsuits on restricting the right to freedom of assembly as prescribed by the law.

66. In the annexed Crimea, the Russian legislation on freedom of assembly is de facto applied, including the Federal Law of the Russian Federation "On Meetings, Rallies, Demonstrations, Marches and Pickets" and the provisions of administrative and criminal legislation regarding violations of the order of organization and holding of assemblies. This Law also delegates the right to further restrict the freedom of assembly to the President and the Government, as well as to the bodies of state power of the subjects of the Russian Federation.
67. Additional research is needed to analyse the observance of freedom of assembly on the temporarily occupied parts of Donetsk and Luhansk oblasts. However, the available information from open sources showcases that the rulemaking of the "authorities" of the so-called "DPR" and "LPR" does not play a decisive role in the restrictions on this freedom: in most cases – contrary to the "law" – peaceful assemblies are stopped by intimidation³³, dispersed by force³⁴, including the use of firearms³⁵, and their participants and organizers are prosecuted and apprehended³⁶. Such repressions apply to pro-Ukrainian protests, assemblies against the policies of "authorities" and "officials" of the occupying power or the authorities of the Russian Federation, as well as to non-planned assemblies provoked by social problems³⁷. At the same time, assemblies in support of the "DPR," "LPR" and their leaders, the Russian Federation and its leaders face no barriers on the occupied parts of Donetsk and Luhansk oblasts.

33 According to the TV channel "UA:Donbas:" <https://youtu.be/fKWydDlhCKo>

34 According to the website "Holovne," the website of the Internet version of the newspaper "Donbas," the website of the magazine "Novyi Chas," the website of the newspaper "Technopolis," the website of the TV channel "ZIK:" <https://glavnoe.ua/news/n331781-v-donecke-razognali-miting-za-vosstanovlenie-svjazi-vodafone>, <http://donbass.ua/news/region/2018/04/05/boeviki-zaharchenka-razognali-miting-za-vozobnovlenie-mobilnoi-svjazi-mts-ukraina-v-donecke.html>, <https://nv.ua/ukraine/events/miting-v-donetske-razognali-eshche-do-ego-nachala-68539.html>, https://tehnopolis.com.ua/index.php?option=com_content&view=article&id=21988&catid=74:donbass&Itemid=34, https://zik.ua/ru/news/2016/08/18/demokratyya_v_dnr_v_donetske_zhestoko_razognaly_uchastnykov_pyketa_787862

35 According to the Internet publication Joinfo.ua, the website "Holovne," the website of the magazine "Focus," the website of "24 channel:" https://joinfo.ua/politic/1057463_Novosti-Novrossii-zhiteli-Gorlovki-podnyali-bunt.html, <https://glavnoe.ua/news/n200483>, <https://focus.ua/country/318297/>, https://24tv.ua/ru/boeviki_zhestko_razognali_miting_v_donecke_est_tjazhelo_ranenye_n706525

36 According to the website of the newspaper "Facts," the website "Apostrophe", the Internet portals bigmir.net and Espresso.tv, as well as video material of Serhii Bilous: <https://youtu.be/hzd8t-UW64k>, <http://fakty.ua/201603-ocherednaya-stihijnaya-akciya-protesta-v-donecke-zakonchilas-arestom-otdelnyh-rukovoditelej-zhkh-dnr>, <https://apostrophe.ua/ua/news/society/accidents/2017-06-20/geroy-ukrainskogo-podpolya-rasskazal-kak-boeviki-lnr-podavlyayut-golodnyie-buntyi/99363>, <http://news.bigmir.net/ukraine/931330-V-Doncke-razognali-miting-v-podderzhku-smecshennogo-Purgina>, https://espresso.tv/news/2017/04/10/pyani_terorysty_quotdnrquot_vbyly_cyvilnogo_pobyly_ponad_10_lyudey_ta_rozignaly_stykhiyny_mityng

37 According to the material "Hunger riots in the self-proclaimed DPR and LPR" from Wikipedia: <http://bit.ly/1alZHzi>

RESTRICTIONS OF ELECTORAL RIGHTS OF THE IDPS (ARTICLE 25)

68. Article 38 of Ukraine's Constitution states that citizens have the right to participate in the administration of state affairs, All-Ukrainian and local referendums, freely elect and to be elected to state authorities and institutions of local self-government.
69. Article 14 of the Law of Ukraine "On Ensuring Rights and Freedoms of Internally Displaced Persons" states that IDPs shall enjoy the same rights and freedoms as other persons that permanently reside in Ukraine in accordance with the Constitution, legislation of Ukraine and international agreements. Their discrimination to exercise any rights and freedoms based on their internal displacement shall be prohibited.
70. The Committee of Ministers of the Council of Europe (2006) and Parliamentary Assembly Recommendations 1877 (2009) define the obligation of States to ensure via law the rights of IDPs during the elections (including local)³⁸. The Parliamentary Assembly's Resolution 2198 (2018) "Humanitarian Consequences of the War in Ukraine" urges the Ukrainian authorities to provide mechanisms for ensuring the voting rights of IDPs in all elections, including at local level³⁹.
71. In Ukraine, people can participate in local democracy only in places of their residence registration which are often different from the factual ones. Elements of Ukraine's electoral law (in particular, Laws of Ukraine "On Parliamentary Elections" and "On Local Elections") exclude IDPs from participating in electing Members of Parliament in single-member districts, mayors and members of the village, settlement and city councils. During the last four years, there has been no equal participation in political and public affairs for persons who became IDPs (about 4% of the Ukrainian electorate). In the parliamentary elections in October 2014, IDPs did not elect 50% of members of Parliament (in majority constituencies in their new place of residence). In the local elections in October 2015, IDPs did not elect mayors and local councils' members. In the process of current decentralization reform, IDPs or citizens who are not registered in local communities do not have the opportunity to participate in forming local self-government bodies through elections in territorial communities, city and oblast where they live. IDPs have limited opportunities to sign electronic petitions, initiate projects

38 <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24432&>

39 <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17759&lang=EN>

for participatory budgets, take part in public hearings in the communities where they moved.

- 72.** According to the results of focus group discussions conducted by NGO “Group of Influence” among IDPs, most respondents prefer not to change their place of residence registration. Retaining the place of residence registration on the occupied territories is primarily linked to at least some guarantee of maintaining their ownership of housing, which remains there. Equally important is the fact that the registration on the non-government-controlled areas enables an easier crossing of checkpoints and, in a way, helps IDPs not to lose connection with the place of their previous residence, relatives, and friends. It also facilitates access to their property abandoned during the displacement. The IDPs also talked about their previous place of residence registration as a guarantee of citizens’ rights. Cancellation of the previous registration in the absence of opportunities to obtain housing in a new place actually excludes people from the system based on territorial registration rights⁴⁰.
- 73.** IDPs are not the only group that faces challenges to their enfranchisement in Ukraine. Other mobile groups, whose actual place of residence is not the same as their registered residence and voter address, also face obstacles to exercise their electoral rights. The approximate number of Ukrainian voters whose political rights are limited because of their exclusion from the electoral process at the local level is at least 12 percent from the total number of voters. Almost one million Ukrainians do not have any registration of the place of residence.
- 74.** To increase the level of participation in political and public affairs, in 2016 a group of independent experts⁴¹ developed draft law # 6240 on Ensuring Access to the Right to Vote for Internally Displaced Persons and Other Internal Migrants. Amendments to the effective Ukrainian legislation proposed by the draft law provide that voters will be able to apply to vote in their place of actual residence, regardless of their formal place of residence registration.
- 75.** According to the website of the State Register of Voters, as of 31 January 2019, 991,789 citizens left the register of voters and do not have an electoral address. Therefore, these citizens cannot be included in the voter lists and exercise the right

⁴⁰ <https://www.vplyv.org.ua/archives/1208>

⁴¹ The Draft Law was prepared by the NGO “Group of Influence” and Civil Network OPORA, in consultations with the IFES, Central Election Commission, representatives of the Verkhovna Rada of Ukraine, Ministry of Temporarily Occupied Territories and IDPs in Ukraine, IDPs and members of Coalition

to vote at any elections. A significant share of such voters are young people from temporarily occupied territories who, after graduating from universities, lost their place of registration in the university's dormitory and are not able to obtain a new place of registration on the Government-controlled territory of Ukraine. In addition, there is an unidentified number of young people who have not registered their place of residence and are not included in the voter register at all. As the electoral address is only linked to the residence registration, it significantly reduces the number of citizens who can take part in the elections. The Central Election Commission and the MPs should review the outdated bureaucratic provisions that link the possibility to exercise electoral rights to an officially registered place of residence.

RECOMMENDATIONS

In view of the continuing violations of civil and political rights of persons affected by the international armed conflict in Ukraine, the Coalition requests the Committee to kindly consider the inclusion of the following recommendations in its Concluding Observations to the Eighth Periodic Report of Ukraine:

Discrimination of the IDPs and restriction of the guaranteed constitutional rights (Articles 2, 25, 26 of the Covenant):

- to eliminate discriminatory legislative provisions concerning IDPs and residents of TOT;
- to create equal conditions for one's exercise of the rights and freedoms regardless of the place of residence registration and/or the fact of internal displacement;
- In order to eliminate discrimination, abolish the legal provisions that recognize the persons having a registered place of residence in Crimea the non-residents;
- to ensure the right to social security for people affected by the international armed conflict in Ukraine without discrimination, in particular, by creating a mechanism for pension payment for the residents of TOT;
- the Parliament of Ukraine should adopt the draft law # 6692 "On Amendments to Certain Laws of Ukraine Concerning the Right to Receive Pensions for Certain Categories of Citizens" which was proposed by non-governmental

organizations and specifies a mechanism for payment of pensions to residents of the TOTs of Donetsk and Luhansk oblasts.

Restriction on the freedom of movement (Article 12 of the Covenant):

- restore passenger transportation to/from the TOTs in Crimea, Donetsk and Luhansk oblasts;
- cancel the permit system that entails issuing permits to individuals for crossing the contact line in Donetsk and Luhansk oblasts;
- consider opening additional checkpoint in Luhansk oblast;
- provide proper refurbishment and equipment of the checkpoints in Donetsk and Luhansk oblasts and at the administrative border with Crimea;
- compile the list of items prohibited to carry through the administrative border with Crimea/contact line in Donetsk and Luhansk oblasts (instead of the list of permitted items that is currently in effect);
- simplify the rules for crossing the administrative border with Crimea for children under 16 y.o. who do not have passports.

Registration of births and deaths that happened on the temporarily occupied territories of Ukraine, issuance of identification documents (Article 16, part 2 of Article 24 of the Covenant):

- Introduce an administrative (extra-judicial) procedure for registration of births and deaths on the temporarily occupied territories of Ukraine;
- Introduce transparent mechanisms for identification of individuals who receive passport services (in particular, when a passport of a citizen of Ukraine is produced);
- enable the children residing on the TOTs to receive a residence registration at the TOTs.

Collection of personal data on the IDPs and residents of the temporarily occupied territories (Article 17 of the Covenant):

- provide conditions for the protection of personal data of the IDPs during the verification procedure for recipients of social benefits;
- eliminate the practice of transferring personal data of residents of the TOTs in Crimea to the bodies of the pension fund of the Russian Federation.

Freedom of conscience and religion (Article 18 of the Covenant):

- to adopt a Law, which establishes the criteria for recognizing a person as the one who is persecuted for political reasons;
- continuously investigate the violations of freedom of conscience and religion, the persecutions of representatives of religious groups at the TOTs in Crimea, document these violations and contact international courts and tribunals;
- provide aid – including financial – to persons who have been victims of politically motivated persecutions and persecutions related to their political, ethnic, religious and other beliefs.

Freedom of peaceful assembly (Article 21 of the Covenant)

- abandon the illegal practice of prohibitions and granting permits for holding peaceful assemblies, which are based on regulations or orders, and not on the Law. In case of real threats to the life and health of people, apply proportional measures of legal restriction of freedom of movement and evacuation.

Restrictions of electoral rights of the IDPs (Article 25):

- adopt Draft Law # 6240 on Ensuring Access to the Right to Vote for Internally Displaced Persons and Other Internal Migrants;
- include in the draft Election Code of Ukraine (# 3112-1), which is being prepared for the second reading, the relevant amendments to ensure the electoral rights of internally displaced persons and other mobile citizens inside the country in all elections, including at local level;
- take all legal and practical measures to enable IDPs to exercise their right to vote in national and local elections and to prevent discrimination based on registration of the place of residence and that on a regional basis in exercising the right to participate in public affairs;
- bring national laws related to citizens' participation in public affairs in compliance with international standards relevant to internally displaced persons, internal labour migrants and other groups of citizens;
- eliminate obstacles for citizens through the reform of the residence registration system of citizens and consider possibility of simplifying voter registration procedures and separate the voting address from the formal registered place of residence.

