

Protecting the rights of Ukraine's internally displaced people

After three years of conflict more progress needs to be made in developing policies to help protect the displaced population. The government should eliminate barriers to accessing benefits, create efficient procedures for obtaining civil documentation and ensure compensation payments are made for damaged and destroyed property.

Background

The conflict between the Ukrainian government and pro-Russian separatist forces in eastern Ukraine remains unresolved since erupting over three years ago and despite diplomatic efforts and the signing of a cease-fire agreement in February 2015. Since this agreement entered into force, localised hostilities along the contact-line still occur regularly.

The UN estimates some 4.4 million people as being affected by the conflict in eastern Ukraine - 4 million of whom require humanitarian assistance. This includes an estimated 2.3 million people living in the non-government controlled areas (NGCA). According to the latest government data of the Ministry of Social Policy, there are over 1.5 million internally displaced people (IDPs) registered.

With the displacement-affected population lacking prospects of durable solutions, issues related to

housing, land and property, social security and documentation remain key human rights concerns in Ukraine, with the enjoyment of many rights remaining limited for IDPs and the conflict-affected population.

Access to pensions

According to the current regulations, Ukrainians residing in the NGCA are not eligible to receive pension payments from the Government of Ukraine. To access their earned entitlement they need to move to the government-controlled areas (GCA) and register as IDPs. This has deprived the most vulnerable IDPs of their only source of income, subjected them to onerous and confusing bureaucratic procedures and has led to unnecessary displacement and artificial IDP registration. More than 400,000 people have lost

their pensions since more rigorous residence verification checks have been enforced.

Equal access to and enjoyment of the right to social security and property is guaranteed by Article 17 of the Universal Declaration of Human Rights (UDHR), Article 9 of the International Covenant on Economic, Social and Cultural Rights and Principle 1 of the Guiding Principles on Internal Displacement. Citizens cannot be adversely deprived of access to their property. Yet, current practice places additional burdens on people and penalises them for residing on the conflict-affected territory of eastern Ukraine. Particularly difficult is the situation of those pensioners who have chronic illnesses or disabilities. These people are virtually cut off from accessing their pensions, as their health conditions often do not allow them to travel to the GCA.

The Government of Ukraine also established special procedures for IDPs to access their pensions. The payments are conducted through the single state bank, “Oschadbank”, which is authorised to issue and maintain the electronic pension certificates, as well as to conduct physical identification of pensioner-IDPs. The system has many technical flaws, including the limited capacity of one bank to serve all pensioners-IDPs and recurring errors made during physical identification procedures. However, the main issue of concern are the challenges faced by IDPs with disabilities who are seeking to access their entitlements. All IDPs are requested to personally appear at the territorial departments of the Pension Fund, or at “Oschadbank”, in order to satisfy physical identification procedures. Internally displaced people who have limited ability to move are often unable to fulfil this requirement. IDPs are also stripped of the power of attorney, so they cannot authorise a third person to represent their interests at the Pension Fund. This can lead to major delays, with some disabled IDPs not receiving their pension for several months.



Aleksandra Andreevna, 82 years old, is displaced. She is paralysed. Once every three months her daughter needs to bring Aleksandra Andreevna to “Oschadbank” for physical identification. If she is unable to make the journey her pension account will be blocked. Photo Credit: Georgiy Prigeba, Facebook

Access to the civil documentation

The issuance of civil documentation in Ukraine (birth, marriage, divorce and death certificates) is conducted by the local registry offices in administrative proceedings. The procedure is free of charge and is conducted in the locality where a person resides. People living in the NGCA are often unable to access these registration procedures as the Government of Ukraine also does not allow registry offices to accept applications from people residing in the NGCA. Currently, Ukrainian legislation treats any decision or document issued in the NGCA territory as invalid and not having any legal force.

To overcome this challenge, Ukrainians living in the NGCA are required by the Government to undertake burdensome and expensive court proceedings. Oftentimes people need to travel 300 km from the place of their residence to the closest court in the GCA. Such travel also entails crossing the contact-line, exposing these people to security risks. Such procedures are also placing major strains on an already overstretched court system.

A lack of documentation and an inability to register events relating to civil status can have serious consequences for individuals and communities including barriers to accessing key social services and benefits. Absence of birth registration and certificates can make it difficult to obtain legal identity and increases the risk of statelessness. Lack of death registration and certificates can make it difficult to manage, inherit and/or reclaim lost property.

Housing, land and property rights

According to the Shelter Cluster, over 17 000 buildings have been damaged or destroyed during the conflict in eastern Ukraine. The Government of Ukraine has not yet developed the mechanisms to address the losses for the housing, land and property damaged or destroyed as a consequence of the hostilities. Back in 2014, the Government of Ukraine approved an action plan which envisaged development of the procedures for assessment and compensation of damages. However, to date there has been no progress in the plan's implementation.

In the absence of the administrative procedures the only avenue for people to claim the damages remains the court.

The present legal uncertainty, coupled with financial burden of court proceedings, including the court fees, which amount to 1% of the value of the property claim, discourage people from claiming damages through court proceedings. As of July 2017 there were only 110 cases in the court, which is less than 1% of all potential claims of damages to housing. It should also be noted that the majority of damages occurred in the summer and autumn of 2014. According to Ukrainian legislation, a three-year prescription period applies

to such cases and so soon people will lose the opportunity to seek compensation through the national court system.

NRC recommendations:

The Government of Ukraine needs to ensure equal access to the enjoyment of rights for all citizens, including IDPs and the conflict-affected population. Namely:

- Pension and social welfare payments should be de-linked from IDP status and not dependent on residency in the GCA
- Administrative procedures for obtaining civil documentation should be available and accessible for all, including people residing in the NGCA
- Administrative procedures for restitution and compensation for damage and loss of property caused by hostilities in eastern Ukraine should be developed and implemented

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