



Observance of civil and political rights of persons affected by the armed conflict in Ukraine

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

List of issues

In June 2018, Ukraine submitted the Eighth Periodic Report on Ukraine's implementation of the International Covenant on Civil and Political Rights (hereinafter – the Covenant)¹.

Nevertheless, the matters related to the conflict and its impact on the observance of human rights in Ukraine have not been properly reflected in the state report while ensuring the rights of conflict-affected people, including internally displaced persons, is one of the most urgent issues in the context of international armed conflict.

Therefore, the Coalition of NGOs working with the rights of internally displaced persons and those who reside on the temporarily occupied territories of Ukraine has drafted and tabled with the Committee the shadow report focusing specifically on the civil and political rights of conflict-affected people in Ukraine².

This submission provides brief summary on the issues discussed in more details in the shadow report, as well as specifies questions to the Government of Ukraine.

The authors of the submission have considerable experience in drafting and advocating for draft legislation in the field of protection of IDPs' rights, take part in working groups at line ministries, provide notable social, information and legal assistance to conflict-affected people and cover the events that take place on the temporarily occupied territories of Ukraine.

The Coalition includes:

- NGO "Donbas SOS," <http://www.donbasssos.org>
- NGO "Crimea SOS," <http://krymsos.com/>
- CF "Right to Protection," <http://vpl.com.ua/uk/>
- CF "Vostok SOS," <http://vostok-sos.org/>
- NGO "Group of Influence" (*Hrupa Vplyvu*), <https://www.vplyv.org.ua/>
- Programme of advisers on internally displaced persons implemented by the CF "Stabilization Support Services," <http://radnyk.org>
- NGO "ZMINA.Human Rights Centre," <https://humanrights.org.ua/>

¹ The text of the Eighth Periodic Report is available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fUKR%2f8&Lang=en.

² The text of the Coalition's shadow report is available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/UKR/INT_CCPR_ICO_UKR_34947_E.pdf.

List of abbreviations

ARC – Autonomous Republic of Crimea

ATO – Anti-terrorist operation

CCU – Criminal Code of Ukraine

CMU – Cabinet of Ministers of Ukraine

IDPs – Internally displaced persons

MIA – Ministry of Internal Affairs

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

NGO – Non-governmental organization

PFU – Pension Fund of Ukraine

RF – Russian Federation

SBU – Security Service of Ukraine

SMSU – State Migration Service of Ukraine

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

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

1. According to part 1 of Article 2 of the Covenant, each State Party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, 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. Nevertheless, the IDPs and residents of TOTs face numerous forms of discrimination. These are mostly the direct consequences of the legislative restrictions on access to the exercise of certain rights and freedoms of persons who have fled from or who reside on the TOTs. Such restrictions include the inability to fully exercise their electoral rights (the right to vote at local elections), to receive pensions on equal footing with other citizens, restrictions on the freedom of movement, restrictions on business, tax and banking, etc. For example, Crimean residents are considered non-residents of Ukraine in banking and tax fields and thus have to pay higher taxes and fees than other citizens of Ukraine.

3. Discrimination in the exercise of their right to social protection – namely, to pension – may be considered one of the most widespread forms of discrimination against conflict-affected persons. Different procedures to receive a pension have been introduced for residents of the temporarily occupied Crimea and the city of Sevastopol and the occupied parts of Donetsk and Luhansk oblasts.

4. To receive a pension, citizens of Ukraine residing on the occupied territories of the ARC and Sevastopol must contact the designated bodies of the Pension Fund of Ukraine on Government-controlled territories and additionally provide documents issued by the authorized bodies of the Russian Federation stating that the person is not paid a pension at the place of registration on the territory of Crimea, as well as a personal declaration that a person is not a citizen of the occupying state³. In addition, the PFU authorities send a request to the Russian Federation to receive a hardcopy of pension case of an applicant. Payment of the pension only starts/resumes after the pension case is received from the authorities of the Russian Federation at the request of the territorial departments of the PFU along with the documents proving that a person is not paid or suspended payment of pension in Crimea.

5. At the same time, the Government of Ukraine has not created an adequate mechanism to pay pensions to the residents of the TOTs of Donetsk and Luhansk oblasts. Currently, the only way to receive a pension is to get registered as an IDP. If a pensioner who is a permanent resident of the TOTs has no proper IDP registration, s/he is not paid pension. As a result, the state's debt on unpaid pensions to the TOT residents equals UAH 62.2 Billion as of July 2018⁴, because at least half a million of the pensioners residing on the TOTs of Donetsk and Luhansk oblasts do not receive their payments. This debt is constantly increasing. According to effective legislation of Ukraine, the pension is a hereditary property, therefore, the state will have to pay the debt from the unpaid pensions to the successors of pensioners, if not to the pensioners themselves.

6. When it comes to the IDPs, they are subject to additional discriminatory provisions that do not apply to other pensioners of Ukraine and that do not meet the criteria of necessity and proportionality. In addition, they do not comply with the law of Ukraine, as was established in numerous court decisions, in particular, the decisions of the Supreme Court of Ukraine⁵. For example, a pensioner who has been registered as an IDP must periodically undergo a so-called

³ <http://zakon3.rada.gov.ua/laws/show/1058-15/page11>.

⁴ Which equals approximately EUR 2.2 Billion.

⁵ In case # 263/7763/17, the Supreme Court upheld that it is illegal to stop pensions to the IDPs if they are absent from their place of residence. The text of the decision is available at: <http://www.reyestr.court.gov.ua/Review/72028927>.

identification – confirmation of his/her identify – in the institutions of Oshchadbank of Ukraine that is the only bank in which the IDPs can open an account to receive social benefits and pensions. If a pensioner returns to the TOTs or if s/he stays there for more than 60 days, his/her pension is stopped. If the pension is renewed later on, unpaid amount of pension for the previous period is not re-paid⁶. For the IDPs from Crimea, the same procedure of assigning pensions applies as to the residents of the occupied Crimea.

Suggested Questions

- What are the practical steps that the Government of Ukraine takes to ensure the right to pension of residents of the occupied territories of Ukraine without discrimination?
- What is currently the amount of state's debt to pensioners from the occupied territories due to non-payment of their pensions, and what measures does the Government take to secure the payment of this debt (has a respective mechanism been developed)?
- Are there any changes to the procedure for payment of pensions to the residents of Crimean TOTs so that personal data of applicants are not transferred to the Russian Federation?
- What factors justify the need to create additional mechanisms for controlling the IDPs when they receive pensions/social payments others than IDP-related payments?

Restriction of the freedom of movement

(Article 12 of the Covenant)

7. According to Article 12 of the Covenant, everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his/her residence. No one shall be arbitrarily deprived of the right to enter his/her own country. However, after the outbreak of armed aggression of the Russian Federation and the occupation of part of its territory, Ukraine has introduced a number of restrictions on freedom of movement within the country, some of which are adequately justified (for example, establishment of checkpoints and strengthened control over the movement of persons from/to the TOTs). At the same time, some restrictions imposed by Ukrainian authorities may be regarded as a disproportionate and unjustified interference with the exercise of the freedom of movement guaranteed by the Constitution of Ukraine.

8. A lot of problems are associated with crossing both the administrative border with Crimea and the contact line in Donetsk and Luhansk oblasts. First of all, the state has been banning the passenger transportation from/to the Crimean TOTs since 2014, and from/to the non-Government-controlled territories of Donetsk and Luhansk oblasts, since 2015. However, the number of border crossings from/to the occupied Crimea and the contact line in Donetsk and Luhansk oblasts is increasing every year, and since 2018, it amounts to over 1 million crossings

⁶ According to the CMU Resolution # 335 of 25.04.2018, social payments and pensions that have not been paid in the previous period are accounted for and paid through a separate procedure determined by the Cabinet of Ministers of Ukraine. As of 14 August 2019, this procedure has not been developed.

per month⁷. Notwithstanding such a large passenger flow, the checkpoints on the administrative border with Crimea and on the contact line need considerable refurbishment. It is necessary to set up healthcare facilities at the checkpoints, to provide proper sanitary and hygienic conditions, etc.

9. To cross the contact line in Donetsk and Luhansk oblasts, citizens of Ukraine and foreigners need to obtain a permit from the Security Service of Ukraine. It is mandatory for crossing the contact line from/to the TOTs. Such a permit must be obtained in advance, and it is only since March 2019 that it has become valid indefinitely (prior to that, all permits were valid for one year). Citizens of Ukraine do not need a specific permit to cross the administrative border with the occupied Crimea, but the foreigners and stateless persons do need it.

10. The legislation restricts the ability to bring personal belongings and goods from/to the TOTs. In particular, an exhaustive list of allowed items for transportation is established. It is outdated and does not meet the needs of people (the procedure of bringing goods to/from Crimea is similar to the customs procedure as for the import/export of items abroad). In addition, the transportation of pets, coffins (ash) and some food is not regulated.

Suggested Questions

- When and what kind of passenger transportation with the occupied territories of Crimea and Donetsk and Luhansk oblasts will be restored?
- What specific measures will Ukraine take to equip the checkpoints and service areas at the border with Crimean TOTs and at the contact line in Donetsk and Luhansk oblasts?
- Does the Government plan to abolish the permit system for entry or exit from the TOTs in Donetsk and Luhansk oblasts?
- What are the measures taken by the state to open additional checkpoints, in particular in Luhansk oblast?
- When will the list of items banned from movement through the contact line in Donetsk and Luhansk oblasts and across the administrative border with Crimea be approved to replace the list of items allowed for carrying?

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)

11. Article 16 along with part 2 of Article 24 set forth that everyone, including newborns, shall have the right to recognition everywhere as a person before the law. For children, it means to be registered immediately after birth and be given a name. Without a birth certificate, many public services are unavailable, including healthcare, access to education, social security, etc. Verification of nationality may also be an issue.

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<https://app.powerbi.com/view?r=eyJrIjojYTdiM2VlOGEtYTdlZi00OWI4LTlhNTgtZGFhNWkMGZiMmZjliwidCI6IjdhNTE3MzZlTE1ZGYtNDQ1MC04ZjMyLWE5ODJmZTBhYTEyNSIsImMiOi99>

12. Currently, the TOT residents only have one option to obtain a child's birth certificate – apply to court (it should be noted that this procedure was simplified in 2016). At the same time, in the first half of 2019, Ukrainian authorities issued 5,227 birth certificates to the TOT residents⁸, while according to open sources, the *de facto* authorities of self-proclaimed republics in Donetsk and Luhansk oblasts and the occupation *de facto* authorities in Crimea, 17,469 children were born there. It means that only about 30% children born on the non-Government-controlled territories of Ukraine during the first half of 2019 received birth certificates issued in accordance with Ukrainian law.

13. Persons residing or having their registered place of residence at the TOTs also have issues with obtaining a passport of Ukraine's citizen. The main problem they face is the need to undergo the so-called identification of a person necessary for entering data into the Unified State Demographic Register (EDDR). Identification of a person entails comparing the data (parameters) provided, including biometric data, with information about a person available in registers, databases, etc. The identification procedure for the IDPs and the TOT residents is cumbersome and sometimes impossible, because almost all the paper files of the Ministry of Internal Affairs and State Migration Service of Ukraine are left on the temporarily occupied territories. In addition, there is no defined list of documents that are necessary and sufficient to pass such identification. If data in the registers is not sufficient, another procedure applies which is establishing an identify of a person (this procedure normally involves interviewing at least three of the applicant's family members and neighbours who can confirm his/her identity, or applying to court).

14. Lack of residence registration has a significant impact on the exercise of rights and eligibility to receive public services in Ukraine (in particular, as regards electoral rights, education, administrative services, etc.)⁹. The TOT residents, including children, receive a passport of a citizen of Ukraine without a registered place of residence on the TOTs, whereas – according to the general procedure – the residence is registered by local self-government bodies which do not operate on the TOTs. Thus, internally displaced children and the TOT residents not having their place of residence registered are restricted in the exercise of the rights and freedoms and additional guarantees provided by the state for conflict-affected children. In addition, in the future, it will prevent them from enjoying certain rights, including the right to participate in all types of elections.

Suggested Questions

- What steps does the state of Ukraine take to introduce an administrative (extrajudicial) procedure for the recognition of births on the TOTs?
- What measures does the state take to prevent the TOT residents from not receiving their citizenship and to simplify the procedure for obtaining their passports?
- How the state of Ukraine is going to address the problem of lack of registered place of residence of the TOT residents?

Collecting personal data of IDPs and residents of temporarily occupied territories

⁸ As of 31 July 2019.

⁹ <https://cedos.org.ua/uk/articles/reystratsiya-mistsya-prozhyvannya-v-ukrayini-problemy-ta-stratehii-reformuvannia>.

(Article 17 of the Covenant)

15. 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. As the Shadow Report reads¹⁰, persons registered as the IDPs regularly face interference with their personal and family lives, as their personal data regarding their movement within the country, leaving the TOTs, having bank savings, etc. are collected and disseminated. In addition, the PFU exchanges personal data of Crimean residents who apply for pension on the Government-controlled territories with the pension fund of the Russian Federation.

16. In 2016, the Ministry of Finance of Ukraine was legally authorized to verify social benefits, in particular, those paid to the IDPs. In 2017, the Ukrainian Parliament Human Rights Commissioner contacted the Constitutional Court of Ukraine regarding the effective mechanism for verifying social benefits. The Constitutional Court of Ukraine concluded that the amendments to the legislation that gave the Ministry of Finance the opportunity to receive personal data, including of IDPs as recipients of social benefits, pensions, subsidies, etc. without their consent are not in line with the Constitution. In its judgment of 11.10.2018, the Court stated that such a way of obtaining information was an interference with the individual's constitutional right to privacy and family life¹¹.

17. As personal data of the IDPs have been accessible for almost two years, numerous cases of criminal prosecution of displaced persons for providing "false data" to receive the so-called IDP benefits have been opened¹². Almost all the sentences in this type of cases – their total number has already exceeded 100 – are incriminating¹³.

18. As previously stated in paragraph 4 of this submission, for the purpose of granting or resuming payment of pensions to Crimean residents, the PFU offices send requests containing personal data of these persons to the Russian Federation seeking information about the pensioners and whether the pensions are paid to them. Several decisions on bringing employees of such PFU offices have been already issued due to illegal transfer of personal data of Crimean residents to the Russian Federation, but the practice continues.

Suggested Questions

- Please indicate is personal data of IDPs who have not given their consent still processed and disseminated for checking whether they receive pensions or other social benefits.
- What measures have been put in place to properly protect personal data of recipients of social benefits?

Freedom of conscience and religion on the temporarily occupied territories of Ukraine

¹⁰ Items 45-47 of the Shadow Report.

¹¹ http://ccu.gov.ua/sites/default/files/docs/7-p_2018.pdf.

¹² Targeted assistance to internally displaced persons to cover living expenses – including housing and utility services – is assigned in accordance with CMU Resolution # 505 of 01.10.2014, provided that they and their families do not own housing (part of housing) on the Government-controlled territory in good condition, and do not have funds on the savings accounts in bank(s) in excess of 25 subsistence minimums established for able-bodied persons.

¹³ Items 49-52 of the Shadow Report.

(Article 18 of the Covenant)

19. Everyone has the right to freedom of thought, conscience and religion. According to Article 18 of the Covenant, freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Notwithstanding, the Russian Federation keeps launching open attacks on freedom of conscience and religion, as well as discriminatory policies and outright harassment of representatives of the Crimean Tatar minority on the temporarily occupied territories of Ukraine, in particular, in Crimea. The occupying power in Crimea is trying to adopt laws to eliminate any religious institutions that are not affiliated with the occupying authorities or controlled by them from the peninsula¹⁴. In addition, the practice of prosecuting Ukrainian citizens for their pro-Ukrainian position is common on the TOTs.

20. As Ukraine does not control the part of its territory occupied by the Russian Federation, Ukraine's implementation of national policy on ensuring freedom of thought, conscience and religion is impossible on the TOTs. However, the state can take measures to support the victims of such aggressive policies of the Russian Federation, as well as their families. Since 2018, the Government of Ukraine has introduced a one-off financial assistance to persons who have been deprived of their personal liberty on the TOTs of Ukraine or in the Russian Federation in connection with the public or political activities of such persons¹⁵. As of 1 August 2019, 105 persons deprived of liberty in Crimea or in the Russian Federation received such assistance, but no one from the TOTs of Donetsk and Luhansk oblasts did, although there were 59 requests for that from such persons or their families. In addition, Ukraine only provides financial assistance to persons who have been deprived of liberty due to their public or political activities. Persons who have suffered prosecution by the Russian Federation on the basis of their affiliation with certain religious groups are not eligible for this financial assistance, although they are political prisoners in the meaning of Council of Europe Parliamentary Assembly Resolution 1900 (2012)¹⁶. Moreover, law enforcement agencies should investigate the facts of politically-grounded persecution of individuals on the TOTs.

Suggested Questions

- Does the state of Ukraine plan to develop protection and support programmes for those who are subjected to persecution by the Russian Federation on the basis of their affiliation with certain religious groups?
- Do law enforcement agencies of Ukraine investigate the facts of political persecution and enforced disappearances of persons on the TOTs?
- Does the state document violations of freedom of conscience and religion, persecution of representatives of religious groups on the TOTs?
- What does the state plan to do to set the criteria for recognizing a person a victim of political persecution?

¹⁴ Items 53-59 of the Shadow Report.

¹⁵ Such financial assistance equals to UAH 100,000 (approximately EUR 3,550).

¹⁶ <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19150&lang=en>.

Freedom of peaceful assembly in the conflict area **(Article 21 of the Covenant)**

21. The Covenant provides for recognition of the right to peaceful assembly. According to Article 21, no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

22. In the national legislation of Ukraine, the freedom of assembly is guaranteed by the Constitution throughout the territory of Ukraine, including on the territories adjacent to the TOTs. At the same time, in the conflict area – on the Government-controlled territories of Donetsk and Luhansk oblasts – citizens constantly face different legal regimes, including ATO area regime, special order of the security zones adjacent to the conflict area, legal regime of martial law, state border regime, boundary state border crossing regime, and regime of 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. Policies on most regimes are regulated at the level of by-laws and sectorial documents. At the same time, the citizens cannot anticipate which legal acts may apply at any particular moment. It enables local authorities to abuse or restrict this freedom on the ground.

Suggested Questions

- What measures does the state take to stop unlawful assembly prohibition and authorization practices based on clarifications or orders rather than on the law?

Restriction of electoral rights of the IDPs **(Article 25 of the Covenant)**

23. According to Article 25 of the Covenant, every citizen shall have the right and the opportunity, without any of the distinctions and without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage.

24. Although the Constitution of Ukraine (Articles 38, 70) sets forth that all legally capable citizens under the age of 18 have the right to vote, other legislative acts and practical circumstances limit the exercise of this right for at least 4% voters who are internally displaced persons (1,177,469 registered IDPs aged 18 and older). The provisions of the electoral law of Ukraine¹⁷ exclude the possibility of IDP participation in the election of Members of Parliament in single-mandate constituencies, heads of settlements and members of village, settlement and city councils at their place of resettlement, as their election address is attached to the registered place of residence.

25. Citizens of Ukraine who reside in different places than their registered places of residence and their electoral address also face obstacles in the exercise of their electoral rights. At least 12% of total number of voters have their political rights restricted as they are excluded from local electoral process. Almost one million (996,628) citizens of Ukraine have no registered place of residence

¹⁷ Laws of Ukraine “On Elections of Members of Parliament of Ukraine,” “On Local Elections,” “On the State Register of Voters,” “On Freedom of Movement and Free Choice of Place of Residence.”

at all, and are virtually denied the right to vote in all types of elections¹⁸. In the early election of the Members of Parliament of Ukraine in July 2019, only 1% of the 4.5 million citizens of Ukraine who have their electoral address on the temporarily occupied territories were able to vote. They had to submit a claim on changing their place of voting to the State Voter Register¹⁹. Such voters could only elect MPs from party lists; they were not given the second ballot to vote for candidates at the single-mandate constituencies. The procedure for changing the place of voting does not apply to local elections. The IDPs are restricted in their right to participate in conduct of local affairs and in the election of local authorities in the communities to which they moved.

Suggested Questions

- Which legislative and practical measures have been taken to enable the IDPs to exercise their right to vote at national and local elections in the communities to which they moved?
- Does the Government of Ukraine plan to initiate amendments to the laws of Ukraine to prevent discrimination on the basis of registration of residence, in particular regarding the exercise of political rights of internally displaced persons and other mobile citizens within the country?
- Why the Electoral Code of Ukraine, adopted by the Parliament on 11.07.2019 does not include any amendments to ensure electoral rights of internally displaced persons and other mobile citizens within the country at all elections, including at the local level?
- Does the state plan to reform the current system of registration of residence?

¹⁸ According to data of State Voter Register as of 31 July 2019, https://www.driv.gov.ua/ords/portal!/cm_core.cm_index?option=ext_num_voters&pdt=1&pmn_id=127.

¹⁹ <https://www.vplyv.org.ua/archives/3613>.