



UPR-UKRAINE

MID-TERM REPORT

BY THE COALITION OF NGOS BASED ON REPORT OF THE WORKING GROUP
ON THE UNIVERSAL PERIODIC REVIEW FOR UKRAINE – A/HRC/37/16

June 2020

On November 15, 2017, the National Report of Ukraine on the state of human rights observance in the framework of the 3rd cycle of the Universal Periodic Review (UPR) was presented. Subsequent to the results of consideration of the report by the Working Group of the Human Rights Council, 190 recommendations were provided to Ukraine, 163 of which were taken on for execution by Ukraine.

As part of Ukraine's Interim Report on the implementation of the UPR Recommendations, the Coalition of non-governmental organizations concerning the rights of victims suffered from the conflict submits to the Human Rights Council an alternative report on Ukraine's implementation of recommendations with regard to protecting the rights of victims of armed conflict, as well as overcoming its negative consequences.

The Coalition consists of:

- NGO «Donbass SOS», <http://www.donbasssos.org>
- NGO «Krym SOS», <http://krymsos.com/>
- CF «Right to Protection», <http://www.r2p.org.ua>
- CF «Vostok-SOS», <http://vostok-sos.org/>
- NGO «Public holding «GRUPA VPLYVU», <https://www.vplyv.org.ua/>
- NGO «ZMINA.Human Rights Center», <https://zmina.ua/>
- NGO «Crimean Human Rights Group», <https://crimeahrg.org/uk/>

List of Abbreviations

AR Crimea – Autonomous Republic of Crimea

IDP – internally displaced person

SMS – State Migration Service of Ukraine

SBGSU – State Border Guard Service of Ukraine

CMU – Cabinet of Ministers of Ukraine

EECP – entry-exit checkpoint

GCT – territory controlled by the government of Ukraine

PFU – Pension Fund of Ukraine

RF – the Russian Federation

TOT – temporarily occupied territories of Ukraine

The TOT of Donetsk and Luhansk regions (the TOT of Donbas) – temporarily occupied territories of the part of Donetsk and Luhansk regions, defined by the Law of Ukraine «About Features of State Policy on Ensuring State Sovereignty of Ukraine in Temporarily Occupied Territories in Donetsk and Luhansk Regions»

The TOT of Crimea is the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, defined by the Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine».



The main trends of state policy in 2017-2020 in the field of protecting victims of armed conflict and overcoming its negative consequences.

Following consideration of the Report of Ukraine by the Working Group of the Human Rights Council, at least 15 recommendations were provided, which directly relate to the activities of the state in the field of protecting civilians affected by the armed conflict. Some of these recommendations have already been implemented, but a greater part of them is still undergoing the process of implementation.

To comprehensively assess the state of implementation of the recommendations by Ukraine, it is advisable to outline the main trends of state policy in 2017-2020 in the field of protecting victims of armed conflict and overcoming its negative consequences.

FIRSTLY, in 2018 part of the territories of Donetsk and Luhansk regions was affixed the status of being occupied by the Russian Federation. In addition, since 2014, the territory of the Autonomous Republic of Crimea had the same status, as well as the city of Sevastopol. This "equalization" of statuses in national legislation has led to a gradual slow movement towards universalization of approaches to ensuring the rights and fundamental freedoms of residents of all TOTs, although today there are a number of features of the legal regime that are not always justified. Thus, for instance, in order to enter the TOT of Crimea, a citizen of Ukraine must have only a passport, but to enter the TOT of Donetsk and Luhansk regions – a passport and a permit issued by the Security Service of Ukraine. At the same time, a lot of issues are common to the inhabitants of the occupied territories (registration of a child birth documents at the TOT, receiving medical, administrative services, etc.).

SECONDLY, important changes have taken place in the state's policy towards internally displaced persons. As the ongoing armed conflict requires the development of long-term solutions, the Strategy for the Integration of Internally Displaced Persons¹ was adopted at the end of 2017, which was never implemented in practice, in particular due to lack of funding budgeted in its Implementation Plan. During this period, different in terms of funding and the number of possible participants housing programs for IDPs appear, which are nevertheless unable to meet the housing needs of IDPs. At the same time, medical care and education needs are less and less heard as being unsatisfied. In 2019, the Electoral Code of Ukraine was adopted, which included proposals from NGOs on the possibility of IDPs participation in local elections. As a result, IDPs will be able to participate in the local elections to be held in Ukraine in October 2020, which is another step towards integrating IDPs into host communities.

THIRDLY, the subject matter of reintegration of residents of the temporarily occupied territories was institutionalized. In 2019, a Parliamentary Committee on Human Rights, Deoccupation and Reintegration of Temporarily Occupied Territories was established in the Verkhovna Rada². As a result of the reorganization, the Ministry of Temporarily Occupied Territories dealing with the issues of their reintegration appeared within the executive branch structure. This trend is crucial in the context of future cessation of the conflict and understanding of the need to take measures to return the inhabitants of the occupied territories to a single information, cultural, economic, political, legal territory of Ukraine.

¹ Integration strategy of internally displaced persons and implementation of long-term decisions on internal displacement until 2020, approved by Order of the Cabinet of Ministers of Ukraine No. 909-p dated 15.11.2007

² The Verkhovna Rada of Ukraine Committee on Human Rights, De-occupation and Reintegration of Temporarily Occupied Territories in Donetsk, Luhansk Regions and the Autonomous Republic of Crimea, the city of Sevastopol, National Minorities and Inter-Ethnic Relations /<http://kompravlud.rada.gov.ua/>

ASSESSMENT OF PROGRESS IN IMPLEMENTING THE RECOMMENDATIONS



Protection of the rights of citizens living in the temporarily occupied territories of Ukraine

6.60. To facilitate access to public administrative services for Crimean residents and allow Ukrainian citizens to move freely between Crimea and the rest of the territory of Ukraine, recognizing UN General Assembly Resolution “On the Territorial Integrity of Ukraine” No. 68/262 and UN General Assembly Resolution “Situation of Human Rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine” No. 71/205 and Ukraine’s sovereignty over Crimea (United Kingdom of Great Britain and Northern Ireland).

Access to public administrative services for residents of all TOTs (both Crimea and Donbas) remains difficult overall, as in most cases TOT residents need to obtain a registration certificate of IDP in order to receive administrative services. There are exceptions. For example, passport services (first of all – registration of a passport of a citizen of Ukraine) can be obtained by the TOT of the Crimea resident at the place of application in the GCT. At the same time, residents of the TOT of Donbas do not have such an opportunity and may apply for a passport only in Donetsk or Luhansk regions, if they do not have a registration certificate of IDP.

It is important to note the positive changes in the provision of administrative services at the entry-exit checkpoints (EECP) with the occupied territory of Crimea. During 2019–2020, two of the three EECP («Chonhar» and “Kalanchak”) were repaired, and the Centers for the Delivery of Administrative Services to residents of the TOT of Crimea were equipped, where Crimeans can, in particular, have a passport of a citizen of Ukraine issued, as well as a passport of a citizen of Ukraine for travel abroad. Along with that, no banking services, medical care are provided at the EECP, and postal service is limited.

One of the most pressing issues in the field of administrative services is the issue of state registration of birth or death of a person, which took place at the TOT (both Crimea and Donbas). Due to the suspension of the Ukrainian authorities’ operation in the occupied territories and the non-recognition of documents issued by the occupying authorities, the establishment of the facts of birth and death in such territory is carried out in court. Since February 2016, there has been a simplified procedure in place for considering such cases, which actually replaces the administrative procedure: because courts are objectively limited in their ability to verify the circumstances of the case, courts actually make decisions based on information stated in the documents issued by the TOT, which can confirm the fact of the birth of a child or death of a person. The case continues on average for about two weeks, requires financial expenditures from the applicants (payment of court fees, attorney’s fees, transportation costs, etc.).

As a result, only 13.5% of children born in Crimea after 2014 received birth certificates as per standard form established by Ukraine. This means that about 105,000 children in the Crimea do not have such documents. Without a birth certificate, many public services are not available, including medical care, access to education, social assistance, and passport documents. For children born in TOT of Donbas, there is an additional risk of statelessness (we are talking about at least 55 thousand children who did not receive Ukrainian birth certificates).

At the same time, judicial consideration of cases regarding the establishment of facts of birth/death in the TOT is a significant burden on the judiciary. In total, since the introduction of the simplified court procedure for establishing the fact of birth or death of a person in the occupied territories, 43,557 court decisions on establishing the facts of birth and almost 70,000 court decisions on establishing the facts of death in the TOT of Crimea were issued, as well as in the TOT of Donetsk and Luhansk regions.

In February 2018, the Verkhovna Rada of Ukraine adopted the law³, the provisions of which provide for an extrajudicial procedure to confirm the facts of birth and death that took place in the TOT of Donetsk and Luhansk regions, and for state registration of these facts in the GCT. However, this provision of the Law does not work due to the fact that the Ministry of Justice, which is responsible for state registration of births and deaths in Ukraine, sees risks in the existence of extrajudicial procedure and has not prepared relevant regulations.

Nevertheless, on June 22, 2020, the Verkhovna Rada of Ukraine registered Draft Laws No. 3713⁴, 3714⁵, which provide for the introduction of an administrative procedure for registration of facts of birth that took place in the TOT of the Crimea.

With respect to the freedom of movement of Ukrainian citizens between Crimea and the rest of Ukraine, the following should be emphasized. Unlike the rules of crossing the demarcation line with the TOT of Donetsk and Luhansk regions, one may enter/leave the TOT of Crimea without special permits or passes. Along with that, the volume and list of personal belongings that can be imported/exported by citizens of Ukraine to/from the TOT of Crimea are subject to restrictions. Such restrictions are applied pursuant to the provisions of the Law of Ukraine «On the Creation of a Free Economic Zone «Crimea» and on the peculiarities of economic activity in the temporarily occupied territory of Ukraine», according to which the crossing of the administrative border with the TOT of Crimea falls under the rule pertaining to crossing the state border of Ukraine. At that, for customs and tax purposes, residents of the TOT of Crimea are considered non-residents of Ukraine.

At the same time, since 2020, cases where citizens who have alimony in arrears or outstanding loans (other financial obligations) were denied entry into the temporarily occupied territory of Ukraine by the SBGSU representatives, have become widespread. The decision to deny entry is made in case when there is information on the ban to leave Ukraine when crossing the state border. Such restrictions violate the right to freedom of movement and impede free movement across the administrative border with the TOT of Crimea.

▼ RECOMMENDATIONS:

- 1 To create conditions under which TOT residents will have free access to administrative services in the GCT without the need to obtain a registration certificate of IDP.
- 2 To introduce an effective, accessible administrative (extrajudicial) procedure for confirming the facts of birth and death that occurred in the TOT.
- 3 To reverse the Law of Ukraine «On the Creation of a Free Economic Zone «Crimea» and on the peculiarities of economic activity in the temporarily occupied territory of Ukraine», in the part pertaining to restrictions of the rights and freedoms of citizens of Ukraine living in the TOT of Crimea.
- 4 Not to impose restrictions that apply when crossing the state border of Ukraine for citizens of Ukraine who cross the administrative border with the TOT of Crimea.

³ Law of Ukraine "About Features of State Policy on Ensuring the State Sovereignty of Ukraine in Temporarily Occupied Territories in Donetsk and Luhansk Regions". Access mode: <https://zakon.rada.gov.ua/laws/show/2268-19#Text>

⁴ Draft Law on Amendments to Some Legislative Acts of Ukraine Regarding Implementation of Administrative Procedure of State Registration of Birth and Deaths which Occurred within Temporarily Occupied Territory of Ukraine in the Autonomous Republic of Crimea and the City of Sevastopol. Access mode: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69230

⁵ Draft Law on Amendments to the Code of Ukraine on Administrative Offenses (with regard to the release of persons from administrative liability for late submission of an application for state registration of the birth of a child born in the temporarily occupied territories of Ukraine). Access mode: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69231

6.61. To support efforts aimed at prevention of human rights violations in Crimea and Donbas by facilitating access for observers, human rights advocates, journalists and lawyers, and to thoroughly investigate any credible allegations of abuse by Ukrainian authorities, and to use all appropriate methods to increase accountability for abuses (the United States of America)

Resolving the issue of access for observers, human rights advocates, journalists and lawyers to the TOT of Crimea and Donbas does not belong to the exclusive competence of the Ukrainian authorities. At the same time, access for observers, human rights advocates, journalists and lawyers to the occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol remains complicated due to the need for obtaining special permits. According to the Resolution of the Cabinet of Ministers of Ukraine No. 367 dated 04.06.2015⁶, foreign journalists, human rights advocates and lawyers must, in fact, receive two permits: they must first obtain a petition or approval from the Ministry of Reintegration, and then wait for 5 days for a decision of the SMS. At that, only a special single entry permit is provided for foreign journalists. To date, the government has not supported thus far human rights advocates' recommendations to simplify such entry procedures in Crimea. The procedure requires changes from a permit to a notification, the introduction of a remote (online) format for submitting documents to obtain the entry permit, as well as the ability to provide supporting documents in order to register the entry permit through foreign consulates of Ukraine in the country of residence of a foreigner in the language of his citizenship.

In addition, since 2019, human rights organizations and initiatives protecting the rights of the TOT of Crimea residents have recorded complaints from people crossing the administrative border about the actions of National Police officers at the entry and exit checkpoints at the temporarily occupied territory. In particular, law enforcement officers unjustifiably detained people, checked their documents, obtained explanations about the location and purpose of the trip, as well as personal data. Due to complaints from NGOs and persons crossing the administrative border, such inspections have stopped. However, the results of monitoring⁷ by human rights organizations and representatives of state authorities in March 2020 revealed that representatives of the National Police continue the above practice, do not explain the grounds for the inspection, and check personal communications means.

▼ RECOMMENDATIONS:

- 1 To simplify the procedure for crossing the administrative border with the TOT of Crimea for foreign journalists, human rights advocates and lawyers.
- 2 To stop illegal actions of representatives of the National Police regarding unjustified detention of people crossing the administrative border with the TOT of Crimea and verification of their documents, collection of personal data.

6.63. To use all existing tools and mechanisms to protect the rights and freedoms of Ukrainian citizens living in the temporarily occupied territories of Ukraine, while taking diplomatic and political measures aimed at restoring the territorial integrity of Ukraine, within its internationally recognized borders (Georgia).

Ukraine is trying to use all possible diplomatic mechanisms to protect the rights of residents of the occupied territories. In addition, Ukraine uses international courts as one of the tools to counter Russian aggression and to bring the aggressor state to justice

⁶ Resolution of the Cabinet of Ministers of Ukraine No. 367 "On Approval of the Procedure of Entry to the Temporarily Occupied Territory of Ukraine and Exit It" dated 04.06.2015. Access mode: <https://zakon.rada.gov.ua/laws/show/367-2015-n#Text>

⁷ Report on the results of joint monitoring of EEC "Kalanchak" and "Chonhar" by the Representation of the President of Ukraine in the Autonomous Republic of Crimea, the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, the Ukrainian Helsinki Human Rights Union, the public organization "KRYMSOS". Electronic source. – Access mode: <https://cutt.ly/5u6BBHx>

for violating the fundamental principles of international law. At present, the European Court of Human Rights is reviewing five complaints of Ukraine against Russia, including a lawsuit filed by Ukraine against Russia for gross violations of human rights by the RF in the occupied Crimea. Cases related to the armed conflict in Ukraine are also considered by the UN International Court of Justice and the International Criminal Court.

However, despite Ukraine's activity at the international level, at the national level, the authorities by no means take all measures to protect the rights and freedoms of Ukrainian citizens living in the TOT. First of all, this refers to the restriction of their right to social protection⁸, as well as an issue of restriction of freedom of movement, the right to education, the right to receive identity documents, and others.

It is worth to separately mention the issue of holding political prisoners of Ukraine by the Russian Federation. The de facto government illegally holds at least 94 political prisoners in the temporarily occupied territory of Crimea and Russia⁹. Official data on the number of people detained in the TOT of Donbas (214 people according to the Security Service of Ukraine) differ from the data provided by human rights organizations (according to the Media Initiative for Human Rights, this number constitutes 130 persons). Such individuals and their families require state guarantees of protection and support from Ukraine.

Thus, in 2019, 7 bills were submitted to the Verkhovna Rada of Ukraine of the VIII convocation to resolve the issues of determining the legal status of persons who have been illegally imprisoned by illegal armed groups or law enforcement agencies of a foreign state. However, none of the bills met either international legislation or the expectations of the hostages themselves and their families with regard to the provision of real support and release from illegal detention.

In November 2019, representatives of the Ministry for Veterans Affairs, Temporarily Occupied Territories and Internally Displaced Persons and NGOs presented ¹⁰a joint Bill «On Social and Legal Protection of Persons Deprived of their Liberty as a Result of Armed Aggression against Ukraine», which defines the criteria for political affairs and persons who may apply for assistance, the mechanism for obtaining legal, medical, psychological, material assistance by political prisoners and members of their families. To date, this draft law has not been registered.

In addition, there is still no coordination between the Ukrainian authorities with regard to the release of political prisoners. In 2019, the Public Platform on the release of Ukrainian citizens illegally detained by the RF based at the Ministry of Foreign Affairs ceased its activities. On May 22, 2020, the Ministry of Foreign Affairs of Ukraine announced that it was resuming such coordination work and launching a Platform to coordinate international efforts on release of the Ukrainian political prisoners illegally detained by the RF¹¹. However, as of the end of June 2020, this Platform has not started its operation.

▼ RECOMMENDATIONS:

- 1 To provide legislative regulation of social and legal protection of persons deprived of their liberty as a result of armed aggression against Ukraine.
- 2 To resume the operation of the Platform to coordinate international efforts on release of the Ukrainian political prisoners illegally detained by the RF at the Ministry of Foreign Affairs of Ukraine with the involvement of human rights organizations and representatives of families of victims which have been illegally deprived of freedom on political grounds.

⁸ You can find out more about this in the analysis of the recommendation implementation 6.128

⁹ Human rights organizations issued a new list of Kremlin prisoners. Electronic source. – Access mode: https://crimeahrg.org/wp-content/uploads/2020/06/prevcrimea_prisoners-_a4_eng_2020_06.pdf

¹⁰ <https://mtot.gov.ua/ua/prezentacija-ta-obgovorennja-projektu-zakonu-ukraiini-pro-socialni-i-pravovi-zahist-osib-pozbavlenih-svobodiv-vnaslidok-zbronoii-agresii-proti-ukraiini>

¹¹ Statement of the Ministry of Foreign Affairs to launch the Platform, which will coordinate international actions to have Ukrainian political prisoners released by Russia. Access mode: <https://mfa.gov.ua/news/mzs-zapuskaye-platformu-shcho-koordinuvati-mizhnarodni-diyi-zi-zvilnennya-rosiyye-ukrayinskih-politvyeziv>



Protection of IDPs Rights

6.34. To implement in full its 2015 National Human Rights Strategy, including the protection of the rights of internally displaced persons; ending discrimination on the grounds of sex and sexual orientation by ratifying the Istanbul Convention, and resolving the issue of hate crimes by strengthening the criminal justice system (Canada).

In 2015, Ukraine adopted the National Human Rights Strategy¹², as well as the Action Plan for its implementation¹³. The National Strategy includes 24 strategic areas, including those directly related to the armed conflict.

In 2020, NGOs monitored the implementation of the National Strategy and noted a generally low level of its implementation (as of February 2020, it has been implemented by about a third)¹⁴. Thus, according to experts, the level of implementation of areas related to armed conflict is as follows:

- protection of the rights of participants in the anti-terrorist operation – **53%**;
- protection of the rights of internally displaced persons (IDPs) – **52%**;
- release of hostages and restoration of their rights – **32%**;
- taking the necessary measures to protect the rights of persons living in the temporarily occupied territory of Ukraine – **21%**;
- ensuring the rights of citizens of Ukraine living in the residential areas of Donetsk and Luhansk regions, on the territory of which public authorities temporarily do not exercise or do not fully exercise their powers – **14%**.

Among the main successes of the Strategy implementation is the adoption of legislation that provides an opportunity for IDPs to fully exercise their right to vote, in particular, to participate in local elections effective July 01, 2020; granting IDPs the right to free legal aid effective January 01, 2017. Along with that, it is important to amend the National Human Rights Strategy to ensure its compliance with current human rights challenges, in particular regarding the social and pension rights of IDPs, development and implementation of housing programs for IDPs, etc.

▼ RECOMMENDATION:

To amend the National Human Rights Strategy to ensure its compliance with current human rights challenges, as well as to develop a new action plan for the implementation of the National Human Rights Strategy for 2020–2023.

6.133. To provide medical care to displaced persons (France);

6.135. To continue efforts to ensure access to education for all children (Portugal);

6.188. To make efforts to improve the accessibility and quality of health services and education in the case of internally displaced persons (Angola);

6.189. To take further steps to improve the access of internally displaced children to quality education, in particular children with special needs, in order to further implement recommendations 97.42 and 97.126 of the second cycle (Haiti).

¹² approved by Decree of the President of Ukraine No. 501/2015 dated August 25, 2015

¹³ The action plan to implement the National Human Rights Strategy for the period up to 2020 approved by the Order of the Cabinet of Ministers of Ukraine No. 1393-p dated November 23, 2015

¹⁴ Electronic source. – Access mode: <http://hro.org.ua/files/docs/1590308435.pdf>

According to the National Monitoring System Report on the Situation of Internally Displaced Persons (September 2019)¹⁵, IDPs are most satisfied with access to education (87%) and least satisfied with the availability of medical services (77%). At that, the availability of basic social services, in particular medical services, depends on the type of residential area. IDPs living in large cities were the most satisfied with access to health services (87%), while IDPs living in villages were the least satisfied with the availability of these services (47%).

In April 2018, the first stage of medical reform in Ukraine was launched, which dealt with primary health care (counselling), which is mostly the first step in providing any type of medical care (except emergency medical care). The patient has the right to choose the primary care physician, regardless of the registered place of residence of such a patient, which makes primary care fully available to IDPs. After choosing a physician, the patient has to sign a Declaration on the physician choice. The second stage of the reform was launched in April 2020 and represents a change in the approach to the financing and provision of secondary (specialized) medical care to the population under the principle of «money following the patient». Apart from that, IDPs are eligible for the governmental Affordable Medicines Programme which allows patients to receive medication for cardiovascular disease, type II diabetes and asthma free of charge or at a small cost.

As far as education goes, it is worth to point out the following. The Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons” stipulates that IDPs have the right to place children in preschool and general education institutions. However, although there is a shortage of places in preschool educational institutions in Ukraine for all residents of Ukraine, no benefits were set at the legislative level for enrolling IDPs’ children in kindergartens. Nevertheless, local governments and local state administrations may establish benefits for IDPs’ children (in particular, with regard to special or priority enrolment in kindergarten, etc.). Beginning in May 2020, IDPs’ children enrolled in preschool, secondary, vocational and technical institutions, regardless of their subordination, types and forms of ownership, should be provided with free meals, but in practice, this norm has not operated yet, as the Cabinet of Ministers has not published the relevant order.

Beginning in 2017, IDPs’ children have the right to receive targeted state support for education, which includes a number of different measures to support IDPs. By the way, in practice, an internally displaced person may be awarded a social scholarship in vocational (technical and vocational), professional preliminary and professional higher education institutions, and IDPs may apply for free or preferential dormitory accommodation.

▼ RECOMMENDATIONS:

to ensure the provision of full-fledged state targeted support to obtain professional (vocational and technical), professional preliminary and higher education.

¹⁵ The National Monitoring System Report on the Situation of Internally Displaced Persons (September 2019). Electronic resource. – Access mode: http://ukraine.iom.int/sites/default/files/nms_round_15_ukr_screen.pdf



Compensation and benefits to victims of armed conflict

6.102. To implement the recommendations of the latest Report of the UN Human Rights Monitoring Mission in Ukraine as of September 2017, in particular, to develop a national mechanism to provide victims among the civilian population with appropriate, effective, prompt and appropriate legal remedies, including compensation of harm (Austria).

Social protection of civilians whose lives or health have been harmed. According to the data provided by the Office of the United Nations High Commissioner for Human Rights, as of March 31, 2020, at least 3,353 civilians had been killed and more than 7,000 injured in eastern Ukraine. Nevertheless, the state has not established a national mechanism to provide civilian victims with adequate, effective, prompt and appropriate legal remedies, including compensation of harm, in particular, there is no clear legal definition of civilians affected by armed conflict, neither the legal status of such persons nor the mechanism of their social protection and compensation for harm have been enshrined on the legislative level.

In 2018, the Law of Ukraine “On the Status of War Veterans, Guarantees of their Social Protection” was supplemented by a norm that regulates the granting of the status of a person with a disability due to war to persons who have an established disability as a result of injuries or other health damage incurred on the territory of an anti-terrorist operation prior to December 01, 2014, and after December 01, 2014 – on the territory of the anti-terrorist operation, where public authorities exercise their powers, and in residential areas located on the line of conflict, during the anti-terrorist operation. However, the provisions of this Law deprive persons who were injured after December 01, 2014, particularly in the temporarily occupied territories of the possibility to acquire a status of a person with a disability as a result of the war. Such restrictions have no valid purpose whatsoever and are therefore discriminatory. In addition, the mechanism to establish such status is too complex and time-consuming, while the benefits established by the specified law for persons who have been granted the status of a person with a disability due to war are irrelevant and insufficient for their overall and comprehensive social protection. Civilians who have received injuries or other health damage, but who have not been diagnosed with a disability, as well as family members of persons who were killed or died as a result of the armed conflict in Ukraine, remain outside the legal field. These persons also need social protection of the state, in particular comprehensive medical and psychological rehabilitation, as well as compensation for harm caused to them.

There is no unified state system for recording the deaths and injuries of civilians during armed conflict. Local authorities and local governments use different methodologies in keeping such records or do not keep them at all. Information from different sources on the number of dead or injured has significant discrepancies. The lack of reliable and uniform official records of civilians affected by the conflict is a necessary condition for the formation of adequate and effective state policy for this category of citizens.

The most vulnerable category of victims of the conflict are children. The legislation of Ukraine provides for a procedure to grant such status, but no benefits or social services for children who have received this status have been approved. No conditions have been created for medical, psychological, pedagogical rehabilitation and social reintegration of children affected by hostilities and armed conflicts.

Compensation for damaged/destroyed housing. In Donetsk and Luhansk regions, 20,708 houses have been damaged or destroyed since the beginning of the armed conflict¹⁶. However, today in Ukraine there is no effective mechanism to compensate for housing that was destroyed as a result of armed aggression by the Russian Federation.

¹⁶ as of March 30, 2020

The existing compensation mechanism¹⁷, which appeared in July 2019, has significant shortcomings, in particular:

- 1) only those who remained at the previous place of residence have the right to compensation. Thus, internally displaced persons¹⁸ who have crossed the borders of residential areas near the demarcation line will not be able to receive compensation;
- 2) the Resolution refers only to housing that was completely destroyed, but the issue of providing compensation for damaged housing remains outside the scope of the document;
- 3) the established compensation mechanism becomes effective only if the regulations on commissions that will consider applications for compensation and the form of the act of inspection of damaged/destroyed housing are approved. Such documents have not been approved yet.

Besides the fact that the compensation mechanism is not effective, in 2020 the funding of the compensation payment program was reduced from UAH 40 million to UAH 20 million.

▼ RECOMMENDATIONS:

- 1 To develop and enshrine in law the concept of civilian victims of armed conflict, which will cover all categories of victims, including those living in the temporarily occupied territories, providing for such persons comprehensive social protection measures, including payment of compensation.
- 2 To create a Unified State Register of persons injured, dead or killed as a result of armed conflict.
- 3 To adopt a law aimed at the social protection of children who have received the status of a child affected by hostilities and armed conflicts, providing them with effective benefits and compensation, as well as to develop a comprehensive state targeted rehabilitation program for such children.
- 4 To provide for a sufficient amount of funds in the state budget to ensure social protection of the affected population.
- 5 To develop an effective compensation mechanism for property damaged or destroyed as a result of armed conflict.
- 6 To record housing destroyed and damaged by armed conflict, as well as housing that was restored at the expense of household owners, charitable or humanitarian assistance and create a Unified Register of property damaged or destroyed by armed conflict.
- 7 To envisage in the State Budget of Ukraine a sufficient amount of funds to pay out compensation for damaged or destroyed property.

6.128. To provide benefits to all citizens who are entitled to them, including pensions and social insurance benefits, regardless of their status as internally displaced persons or their place of residence in the country of their choice (Switzerland).

Residents of the TOT in Donetsk and Luhansk oblasts are deprived of the opportunity to receive pension benefits in the territory controlled by the Government of Ukraine if they are not registered as IDPs. This leads to a violation of their rights to social protection, in particular the constitutional right to a pension, as well as to a significant distortion of statistics on the number of IDPs. In addition, among them, there are handicapped retirees who are physically unable to cross the line of conflict and register as IDPs due to old age or disability, etc. Such persons were left out of the legislation, without any physical or legal opportunity to exercise their right to a pension.

¹⁷ As stipulated by Resolution of the CMU No. 947 dated December 18, 2013 (as amended)

¹⁸ according to the Ministry of Social Policy of Ukraine as of 10.06.2020, 1,447,537 internally displaced persons were registered

Retirees who have received a certificate of IDP registration are also subject to additional restrictions when receiving their pension benefits. In particular, they are required to undergo identification in the Pension Fund of Ukraine at the time pension is awarded, as well as physical identification in the institutions of JSC «State Savings Bank of Ukraine» every six months, and in some residential areas the practice of checking the actual place of residence is ongoing. In case of failure to pass this identification, pension payments are suspended. In addition, all payments to internally displaced persons are made only through the accounts of JSC State Savings Bank of Ukraine, without the possibility of choosing another bank. At the same time, such payments may be suspended on the basis of data received from state bodies, which provide «reasonable grounds to believe that the person has returned to the abandoned place of permanent residence.»

In 2018, the Supreme Court ruled in a model case on the termination of pensions by the Pension Fund of Ukraine for internally displaced persons, in which it found such actions illegal. Following this decision, the courts of the first instance have satisfied thousands of similar claims, but the payment of arrears is practically non-existent. Decisions are executed only in the part of pension payment for the month in which the person's application was received, and pension payments are resumed for the next period. This being said, arrears for the previous period are not being paid due to the fact that the government has not developed a separate procedure for this. In other words, this is in reference to non-execution by bodies of the Pension fund of Ukraine of court decisions in full that contradicts the legislation of Ukraine.

According to the information provided by the Pension Fund of Ukraine, in 2019 alone, the Pension Fund of Ukraine accrued UAH 543.1 million to enforce court decisions on paying out pension benefits to internally displaced persons. Of these, UAH 43.0 million was paid this year. The total debt of the Pension Fund of Ukraine pursuant to similar court decisions on the payment of pension benefits to migrants amounted to UAH 599.8 million (accounting for unpaid funds with reference to 2018 cases).¹⁹ As of the end of 2019, at least 59 people died without having the court decision enforced by the territorial bodies of the PFU.

According to the legislation of Ukraine, the accrued amounts of pension benefits to which the retiree was entitled, but did not receive in time through no fault of his own, are paid retroactively, but not to exceed three years before the date of application for a pension benefit. A three-year limitation on the possibility to receive a pension retroactively, including the receipt of pension by heirs, does not meet the current environment of the retirees belonging to IDPs, as non-receipt of pension benefits is not due to the retiree's fault, but due to the armed conflict and temporary occupation of territories.

Persons who have reached retirement age cannot receive a retirement pension due to insufficient qualifying period, due to the inability to pay insurance premiums in the TOT, and they are subject to double contribution premium if they wish to purchase additional qualifying period.

Other procedures have been put in place for residents of the TOT of Crimea. To receive a pension, they must apply to certain bodies of the PFU in the territory controlled by the government of Ukraine and additionally provide documents from the RF Pension Fund that the person was not granted a pension in the Crimea, as well as a personal declaration of no citizenship of the occupying state. Payment of pension benefits begins/resumes after the receipt of a paper pension case at the request of the territorial offices of the PFU along with the documents on the termination of payment or non-award of a pension benefit, which usually takes from 6 to 12 months. Such situation leads to the aggressor state gaining access to the beneficiary's personal data.

Draft Law 2083-d²⁰, the purpose of which is to regulate the payment of pensions to residents of the temporarily occupied territories was submitted on 05.02.2020 to the relevant Committee of the Verkhovna Rada of Ukraine for revision.

¹⁹ as of 01.06.2019

²⁰ Draft Law on Amendments to Certain Laws of Ukraine on the Exercise of the Right to a Pension. Access mode: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67473

▼ RECOMMENDATIONS:

- 1 To regulate the special regime and procedure for receiving pensions by persons living in the temporarily occupied territories who are not registered as IDPs.
- 2 To develop a procedure for paying pensions to internally displaced persons for the previous period.
- 3 To eliminate discriminatory restrictions with regard to internally displaced persons, including mandatory identification, the possibility to receive a pension only in JSC «State Savings Bank of Ukraine», termination of pension in connection with the return to the temporarily occupied territory.
- 4 To eliminate a three-year limitation for this category of persons with regard to the possibility of receiving unpaid pension retroactively, including receipt of pension by heirs.
- 5 To take into account the possibility to purchase additional qualifying period without the application of sanctions doubling the amount of the single contribution.



Criminalization enforced disappearances

- 6.65** Fully integrate provisions on the criminalization of enforced disappearance into its national legislation (Slovakia);
- 6.66** Take measures to incorporate into its national legislation the crime of enforced disappearance (Argentina);
- 6.67** Take steps to investigate all allegations of enforced disappearance and to prevent and prosecute cases of torture and illegal detention (Italy)/

In 2018, the Verkhovna Rada of Ukraine adopted the Law "On the Legal Status of Missing Persons" (entered into force on August 02, 2018). One of the key innovations of this law was the criminalization of enforced disappearances.

Thus, Article 146-1 appeared in the Criminal Code of Ukraine, according to which the arrest, detention, abduction or deprivation of freedom of a person in any other form, committed by a representative of the state, including a foreign one, with a subsequent refusal to admit the fact of such arrest, detention, abduction or deprivation of freedom of a person in any other form or concealment of information about the fate of such a person or place of stay shall be punishable by imprisonment for a term of three to five years. Therewith, in accordance with Part 2 of the specified Article, the issuance of an order or instruction to perform the actions specified in Part One of this Article, or failure of the manager who became aware of the actions specified in Part One of this Article, or his subordinates to take measures to stop such actions and failure to notify the competent authorities of the crime shall be punishable by imprisonment for a term of five to seven years.

The Note to Article 146-1 reveals the meaning of the term "representatives of a foreign state", which covers as well representatives of irregular illegal armed groups, armed gangs and groups of mercenaries created, subordinated, managed and financed by the Russian Federation, as well as representatives of the occupation government of the Russian Federation, which consists of its state bodies and structures functionally responsible for the management of the temporarily occupied territories of Ukraine, and representatives of self-proclaimed bodies controlled by the Russian Federation, which encroached the exercise of power in the temporarily occupied territories of Ukraine.

However, law enforcement agencies do not apply these provisions to qualify the disappearances of people in the TOT since the beginning of the occupation. Such cases are

qualified under Art. 438 of the Criminal Code of Ukraine as a violation of the laws and customs of war or under Art. 146 of the Criminal Code of Ukraine as illegal deprivation of freedom or kidnapping.

As of May 01, 2020, the National Police of the Autonomous Republic of Crimea is investigating 19 criminal proceedings on the fact of enforced disappearances that took place in the occupied territory of Crimea.

▼ RECOMMENDATION:

to clarify the obstacles to the application of Article 146-1 by the law enforcement agencies of Ukraine in relation to the events that took place in the TOT



Institutional development of the Ministry, which takes care of the issues of temporarily occupied territories and internally displaced persons

6.28. To increase resources allocated to the new Ministry of the Temporarily Occupied Territories and Internally Displaced Persons (Greece);

6.29. To increase the human and financial resources of the Ministry of the Temporarily Occupied Territories and Internally Displaced Persons in order to fully fulfil its mandate (Croatia).

In 2016, *the Ministry of Temporarily Occupied Territories and Internally Displaced Persons* was established in Ukraine, which was reorganized in 2019 by merging it with the Ministry for Veterans Affairs into *the Ministry for Veterans Affairs, Temporarily Occupied Territories and Internally Displaced Persons*. The move did not garner support from either the veterans' community or the repatriates' community. Experts have also expressed numerous concerns that merging three rather different target categories (residents of the occupied territories, internally displaced persons and veterans) into one Ministry is a potentially conflicting step, as they differ in both the nature of the needs and the ways to address them. Yet, the main challenge for the Ministry remains the implementation of its key coordinating role, as most of the issues with regard to the protection of the rights of victims of conflict lies within the competence of various Ministries (including payment of pensions, the issue of education of residents in the occupied territories, EECP equipment, communication development, etc.).

In March 2020, the Ministry was transformed again, this time into *the Ministry of Reintegration of the Temporarily Occupied Territories*. The Head of the Ministry was appointed Deputy Prime Minister for the Reintegration of the Temporarily Occupied Territories, which was one of the requirements of non-governmental organizations, including members of the Coalition.

Funding of the Ministry has gradually increased and in 2020 amounted to UAH 121,158.5 million, which is more than several times higher than the funding of the Ministry in 2017, when it was formed. Although the Ministry structure has changed dynamically over the past five years, the weak representation of the Ministry in the regions remains unchanged (currently, the Ministry has structural units only in Donetsk, Luhansk, and Kherson regions). On average, there are 2-3 Ministry employees in the regions, which is extremely low to obtain adequate information from regions that are close to the temporarily occupied territories.

▼ RECOMMENDATION:

To strengthen the work of the Ministry for Reintegration of Temporarily Occupied Territories in the regions close to the temporarily occupied territories.

MID-TERM REPORT

BY THE COALITION OF NGOS BASED ON REPORT OF THE WORKING GROUP
ON THE UNIVERSAL PERIODIC REVIEW FOR UKRAINE – A/HRC/37/16

