



10 PRIORITY STEPS

in human rights protection amid large-scale armed aggression for 2023

Russian aggression against Ukraine began with the occupation of Crimea in 2014 and has been going on for almost nine years. For a year, the destruction and deaths have swept across the territory of Ukraine. Tens of thousands of killed and injured, millions of forced to leave their homes. Parts of Kherson, Zaporizhzhia, Donetsk, Luhansk regions, and the Autonomous Republic of Crimea remain under occupation.

We, the representatives of human rights non-governmental organizations, which have been taking care of the protection of the rights of victims of the armed conflict all these years, have a consolidated position on the priority steps of the state amid the large-scale armed aggression against Ukraine. The implementation of these recommendations will allow Ukraine to create conditions for the criminal prosecution of war criminals, increase the level of protection of victims of military operations, reduce the level of tension in society regarding prosecution for crimes committed during the temporary occupation, and boost transparency in the decision-making process regarding individual criminal prosecution for war crimes, etc.

THE VERKHOVNA RADA OF UKRAINE IS ADVISED TO:

- 1 Ratify the Rome Statute of the International Criminal Court (ICC) and bring domestic criminal law in line with international.** This will make it possible to strengthen the capacity of the national system to investigate crimes and prosecute persons who committed the most serious international crimes. Ukraine will receive the authority of a full-fledged member of the Assembly of States Parties which is the ICC's highest governing body. This will make it possible to participate in the selection of judges and prosecutors, form priorities and a strategy for the ICC's further activity, recommend situations in different countries for consideration by the Prosecutor's Office of the ICC.
- 2 Introduce an administrative (out-of-court) procedure for acknowledging the acts of civil status that took place in the temporarily occupied territories of Ukraine.** Primarily, it's about the acts of birth, death, marriage, and divorce. Currently, a simplified court procedure has been introduced to consider cases on birth and death that took place in the occupied territories. However, this is not sufficient to ensure the possibility of registering acts of civil status that took place in the temporarily occupied territory of Ukraine, especially after the beginning of large-scale armed aggression. Thus, less than 10% of children born in the occupied territory of Donetsk and Luhansk regions in 2022 have birth certificates issued by the competent authorities of Ukraine. The introduction of the administrative out-of-court procedure will allow people forced to stay under the occupation to receive state documents and provide them with access to the exercise of their rights.
- 3 Determine the categories of persons affected by the armed aggression against Ukraine.** The international armed conflict ongoing since 2014 has resulted in a significant number of victims among the civilian population – killed and injured, missing persons, captives, persons who were forced to leave their place of residence and move within or outside the country, deported persons. Since the beginning of large-scale armed aggression, the number of victims has increased significantly, and it is currently difficult to estimate the number of people who have fallen victim to international crimes and gross violations of human rights. Despite the ongoing armed conflict and the thousands of people affected, the Ukrainian legislation does not define who can be considered victims of the armed conflict. The lack of a strategic state vision leads to the fact that a comprehensive system of support and assistance to victims has not been implemented, which should be based on the assessment of the damage incurred by each victim and a flexible approach to compensation.
- 4 Ensure fair and reasonable compensation for property destroyed or damaged as a result of armed aggression against Ukraine.** Such compensation should be provided via a transparent and accessible out-of-court procedure provided for by a separate special law. One of the initiatives designed to settle this issue is draft law No. 7198 which was adopted as a basis on April 1, 2022 (currently pending second reading). The draft law defines the legal and organizational principles for providing compensation for damage and destruction of certain categories of real estate objects (apartments, other residential premises in buildings, manor houses, etc.) as a result of hostilities, acts of terrorism, sabotage caused by the armed aggression of the Russian Federation against Ukraine since February 24, 2022. It is also designed to determine the principles of creating and keeping the state register of damaged and destroyed property. The draft law pays the most attention to providing compensation for destroyed real estate objects, although many related conditions, as well as the procedure for providing compensation for damaged objects, have to be additionally established by the Government. At the same time, the draft law leaves many questions open. In particular, since the draft law provides for compensation for objects destroyed and damaged since February 24, 2022, the issue of receiving compensation for damage caused before the start of large-scale armed aggression against Ukraine remains.

Also, the draft law sets out certain other restrictions as to granting the compensation. The issue of providing compensation to those victims who are already rebuilding their destroyed or damaged real estate on their own may require additional settlement. Therefore, draft law No. 7198 should be revised taking into account the key comments and passed at second reading.

- 5 Amend the Criminal Code of Ukraine to ensure compliance with the principle of legal certainty in the matter of prosecution for collaborationism.** In the spring of 2022, the Criminal Code of Ukraine was supplemented with new categories of crimes: «collaborationism» (Art. 111-1 of the Criminal Code of Ukraine) and «aiding and abetting the aggressor state» (Art. 111-2 of the Criminal Code of Ukraine). However, the appearance of these norms led to difficulties in distinguishing them from other crimes, in particular, high treason (Art. 111 of the Criminal Code of Ukraine), justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants (Art. 436-2 of the Criminal Code of Ukraine). The investigative and judicial practice of applying these articles also shows the absence of criteria for distinguishing the elements of these crimes, causing problems of double classification and violating the principle of legal certainty. The current wording creates the basis for law enforcement officers' excessive discretion when classifying actions and citizens' misunderstanding of the limits of permissible activities in the occupied territory.

THE CABINET OF MINISTERS OF UKRAINE IS ADVISED TO:

- 6 Create conditions for confirmation of educational qualifications by those who obtained education in the temporarily occupied territory of Ukraine.** Currently, the education obtained in the temporarily occupied territory and the documents on obtaining the corresponding educational and qualification level issued in these territories are invalid and do not entail legal consequences. Accordingly, persons who received such documents cannot find employment in the government-controlled territory. At the same time, there are currently no mechanisms for confirming educational qualifications obtained under the occupation (although such a procedure existed for education recipients in the territory of temporarily occupied Crimea until 2021). A significant number of those wishing to confirm their educational qualifications have specialties that are currently in demand in Ukraine (in particular, medical ones). The introduction of the mechanism of confirmation of acquired qualifications will provide an opportunity for our citizens to get a job in the government-controlled territory and to replenish various branches of the country's economy with specialists currently in high demand.
- 7 Ensure comprehensive implementation of the Law of Ukraine «On Social and Legal Protection of Persons Deprived of Liberty as a Result of Armed Aggression Against Ukraine and Their Family Members».** As of January 2023, according to human rights organizations, the Russian Federation unlawfully holds at least 149 Ukrainian citizens in occupied Crimea and in its territory for political reasons. In addition, after the full-scale invasion, the peninsula became a place of imprisonment for people abducted from the territories occupied after February 24, 2022 (in particular, Kherson and Zaporizhzhia regions). In the Russian-occupied territories of Donetsk and Luhansk regions, thousands of civilians are deprived of their liberty for their pro-Ukrainian views. On November 19, 2022, the Law «On Social and Legal Protection of Persons Deprived of Liberty as a Result of Armed Aggression Against Ukraine and Their Family Members», adopted last January, entered into force. The law defines the legal status and has to provide legal protection and assistance to both civilians and military personnel whose imprisonment is the result of armed aggression, as well as to their families. However, at present, the Government has not adopted the necessary provisions for the comprehensive implementation of the law, in particular, on the provision of healthcare and rehabilitation assistance, resort treatment. Likewise, the unified register of persons, whose deprivation of liberty as a result of the armed aggression against Ukraine is proven, has not been launched.

- 8** **Change the approaches to housing benefits to internally displaced persons (IDPs).** In October 2014, the Government of Ukraine introduced monthly targeted benefits to IDPs to cover their living expenses, including utility payments. The benefit was paid to IDPs on formal grounds and did not take into account the needs or the real financial status of the family. At the same time, in 2022, the state budget allocated UAH 3.05 billion for the payment of targeted assistance. Since the beginning of the large-scale armed aggression, the number of IDPs has at least tripled, reaching 4.87 million IDPs by the end of 2022. The size of housing benefits to IDPs also increased, and the planned budget for payments for 2023 is UAH 86.1 billion. However, as in 2014, this assistance is paid to all IDPs in a fixed sum without assessing the needs of the IDPs. Such a system of payments sooner or later forces the state to look for tools to control them. As in 2016, at the end of 2022, a solution was found in conducting inspections of the place of residence of IDPs and canceling payments to those who are not at home at the time of inspection. Such a system was previously recognized as discriminatory, and inspections were canceled. However, these illegal practices are currently being resumed. The reason is the undifferentiated approach to the benefits to IDPs which do not depend on the assessment of needs or the assessment of the level of integration in the community. Therefore, the approaches to housing benefits to IDPs are subject to review and change.
- 9** **Ensure comprehensive implementation of the Law of Ukraine «On Legal Status of Persons Gone Missing Under Special Circumstances».** This law was adopted by the Verkhovna Rada of Ukraine in July 2018. Since then, it has been repeatedly amended (the last time – in April 2022), but a coherent system of coordination of the state’s efforts to search for persons who went missing under special circumstances, in conditions of armed conflict and occupation, was not developed. And this is in conditions when, according to the International Commission on Missing Persons (ICMP), more than 15,000 people have gone missing during the war in Ukraine. As of the beginning of 2023, the unified register of persons gone missing under special circumstances, which was supposed to become a complete database to search for missing persons, was not launched. As a result, the system of social protection of relatives of missing persons, their social support, does not work.
- 10** **Ensure efficient mechanism to evacuate civilian population during martial law.** In the conditions of large-scale armed aggression against Ukraine, the issue of creating conditions for the evacuation of the civilian population from the territories close to the zone of military operations, as well as from the temporarily occupied territory of Ukraine, became urgent. To do this, it is necessary to ensure systematic coordination between government agencies (military administrations) on the ground and non-governmental national and international organizations that provide assistance in the evacuation of the civilian population. A significant element of the evacuation process is informing the civilian population about what support and assistance they can count on after evacuation and where they will be accommodated. Therefore, it is necessary to carry out efficient awareness raising campaign for people who remain in dangerous areas, so that they can make a decision about evacuation, especially in a situation where it is a family with children or people with reduced mobility. In addition, it is important to introduce mechanisms for a mandatory evacuation of children whose parents refuse to evacuate from particularly dangerous areas of hostilities.