

Upholding the rights of conflict-affected population in Ukraine

The Norwegian Refugee Council, drawing on the daily interaction of its staff with civilians in eastern Ukraine, highlights the precarious situation confronting the conflict-affected population in Ukraine today. The areas in which prompt and sustained action of the Ukrainian authorities is needed are proposed.

Background

As a result of the outbreak of hostilities in eastern Ukraine in 2014, the State territory has been split between government-controlled areas (GCA) and non-government controlled areas (NGCA). As a result, a once-integrated community is now divided by a 500-km long frontline (the so-called “contact line”), with a system of entry-exit checkpoints (EECP) installed on both sides by the parties to the conflict.

Armed clashes, which continue to the present day, have resulted in large-scale loss, destruction or damage to the property of the conflict-affected civilians, including thousands of hectares of arable land heavily contaminated by mines and unexploded ordnance.

Due to the loss of control over a part of its territory and accompanying security concerns, Ukraine withdrew State bodies and services from NGCA and introduced control measures over the movement of people across the contact line (comprising permits and a verification process). Furthermore, having

officially declared all the bodies or structures created by the authorities in NGCA as illegal, Ukrainian authorities do not recognise any act issued by such authorities, including civil status acts or identity documents.

As a result of being cut off from State services of Ukraine, residents of NGCA now need to undertake often long, exhausting and costly travel to GCA in order to claim their entitlements. However, even if people of concern manage to reach governmental services, they still encounter a number of obstacles in accessing a wide range of rights, including access to the system of registration of civil status acts, such as birth and death certificates, as well as in claiming and receiving their pensions (both age and disability).

Continued fighting in both Donetsk and Luhansk regions, often with the use of heavy weaponry in or near densely populated areas, has led to extensive conflict-related damage to private residences of civilians on both sides of the contact line.

Ukrainian legislation providing for a generic right to compensation does not have an adequate and effective remedy for restitution or compensation claims for property which has been lost, damaged and destroyed because of hostilities, both in GCA and NGCA. Moreover, the situation in which residents of NGCA now find themselves is exacerbated by the practical challenges that people face on the way to GCA to access their rights.

While crossing the contact line, concerned civilians are often exposed to serious security and safety risks such as minefields along the roads, periodic shelling and/or queuing at the checkpoints in harsh weather conditions for long hours. Added to this is the pressure that financially vulnerable families experience because of the transportation, accommodation and living expenses incurred by traveling to GCA.

Overall, the conflict-generated discontinuation of State services in NGCA, coupled with the State's, often discriminatory, approach to addressing the needs of residents of those territories, have placed a disproportionate burden on the affected civilian population.

Civil status documentation (birth and death certificates)

A simplified court procedure introduced for residents of NGCA in 2016 in practice presents a lengthy and cumbersome process. It is critical to introduce an accessible responsive procedure of birth and death registration for families from NGCA.

As a result of the withdrawal of State bodies of Ukraine from NGCA, residents of these territories now need to cross the contact line to access the State system of registration of civil status acts, such as birth or death certificates. These documents are critical for a number of reasons.

A birth certificate serves a recognition of the existence of a child under law, which ensures a child's access to the entire spectrum of rights and

to critical State services, such as education and healthcare. Moreover, the birth registration prevents statelessness of children. A death certificate, in turn, is instrumental for managing inheritance claims and subsequent proper settlement of property transactions.

Whereas in 2016 Ukraine introduced a so-called simplified judicial procedure for issuing birth and death certificates for residents of NGCA, this approach still raises several legal and practical concerns. Even though courts are tasked to consider cases on establishing facts of birth and death in NGCA without delay and to use a simplified procedure, the process appears to be lengthy and cumbersome.

In practice, because of the understaffing and significant workload, courts, especially in the areas closer to the contact line where most of residents from NGCA file their applications, are often not able to process the cases of civil status documentation quickly, which forces applicants from NGCA to stay longer or to come back to the GCA again, thus significantly increasing families' expenses.

All these factors frequently make the registration service based on the court procedure inaccessible for many families, especially the most vulnerable ones.

The newly adopted Law of Ukraine No. 2268 – also known as 'Law on Reintegration of Donbas' – in its Article 2 reiterates the non-recognition approach regarding all acts issued by the *de facto* authorities in NGCA, 'except for documents certifying facts of birth or death of a person, which shall supplement an application for the State registration of birth or death of such a person.' This clause presents an excellent opportunity for the relevant authorities to amend current legal regulation of this matter and to establish a new procedure that would govern the issue of birth and death certificates for residents of NGCA.

Moreover, this Law also provides for an exemption of court fees in cases related to the establishment of facts of legal significance, such as birth or death certificates. However, in practice, different courts

interpret this clause in different ways and, consequently, an exemption from court fees is not systematically granted.

NRC recommendations:

- Ukraine is urged to introduce a non-discriminatory accessible administrative procedure for residents of NGCA. This does not exclude employing the court procedure for certain complex cases (as it is generally prescribed by the current legislation of Ukraine).
- In the meantime (while the judicial procedure is still in place), Ukraine is called to take immediate steps on enacting a waiver of court fees in cases of issuing civil status documentation and ensuring that such applications are considered by courts without delay.
- In light of the practical difficulties that residents of NGCA encounter on their way to GCA to apply for birth and death certificates, it is recommended to consider the possibility to bring the relevant services closer to the contact line, for example, by the deployment of mobile teams providing the concerned services.
- Various possibilities should be reviewed to determine the most efficient way to provide birth certificates issued by Ukraine for residents of NGCA who are not able to cross the contact line (because of financial vulnerability and/or actual or perceived security risks).



Photo: Amid Askerov/NRC

Pensions

Payment of pensions to residents of NGCA shall be de-linked from the requirement to be registered as an internally displaced person.

Residents of NGCA have been facing enormous obstacles in claiming and receiving their pensions due to the total withdrawal of the State institutions and public services from NGCA in 2014 and owing to the additional requirements introduced by the authorities specifically for this category of pensioners.

Under the current system, residents of NGCA and people having moved from NGCA are able to claim their pensions only if they are registered as internally displaced people (IDPs) in GCA and regularly undergo a complex discriminatory verification process.

This approach raises legal concerns and generates serious humanitarian consequences, since most pensioners in NGCA depend on their pensions as the only source of income.

Moreover, in practice this policy denies access to the most vulnerable pensioners who are not able to travel to GCA – for example, people with reduced mobility and those who are not able to afford covering travelling and other related expenses.

It is important to recall that the loss of the factual control over a part of its territory does not absolve

Ukraine of its obligations towards its citizens under both domestic and international law. The right to a pension is enshrined in the *Constitution of Ukraine* and is underpinned by the compulsory state pension insurance system. Furthermore, as spelled out in the case law of the European Court of Human Rights, the right to a pension constitutes a right to property, protected by *Protocol I to the European Convention on Human Rights*. It is worth emphasising that the place of residence is not an element that affects the payment of pensions, nor is registration as an IDP required to claim this payment.

NRC recommendations:

- Ukraine is called upon to take all necessary measures to ensure that all pensioners, regardless of their place of residence or registration as IDPs, have access to pensions, in particular, by de-linking payment of pensions and the requirement for a resident of NGCA to be registered as an IDP. In this regard, draft law No. 6692 may be instrumental as it addresses the issue of delinking of pensions from the IDP-registration and deals with other essential amendments of the legislation to safeguard the non-discriminatory access to pensions to people concerned.
- The Government of Ukraine is urged to take immediate steps to implement such an amendment, and *in the interim* to remove all the discriminatory provisions which are not in line with international law and domestic legislation of Ukraine, and which have imposed a highly disproportionate burden on IDPs, particularly the most vulnerable categories.
- The Government is also called to take immediate steps to put in place procedures that facilitate the resumption of payment of pensions from the date of suspension and not from the date of filing an application on resumption of the payment, as it is provided for in legislation currently in force.
- All concerned Ukrainian authorities are urged to consider, in good faith, elaborating a special procedure for payment of pensions for those pensioners who are not able to travel to GCA to claim their entitlements and, if necessary, to negotiate this mechanism with the authorities in NGCA.

Housing, land and property rights: the idea of a mass claims commission

Ukrainian authorities shall take immediate steps to develop a mechanism for the assessing and recording of lost, damaged or destroyed property of the conflict-affected population. Such a mechanism may further facilitate restitution and compensation for the loss/damage/destruction of property incurred as a result of hostilities.

The conflict in eastern Ukraine has affected a large territory, with thousands of houses damaged or destroyed and thousands of hectares of land contaminated with mines and unexploded ordnances along both sides of the contact line.

Accompanied by large-scale displacement, this has had severe humanitarian consequences for the conflict-affected civilian population and requires adequate procedures of restitution and compensation for the loss of rights, use and access to housing, land and property, caused by hostilities.

Even though there is a right to compensation enshrined in Ukrainian legislation, domestic law of Ukraine still has gaps concerning the mechanism for assessing and recording the destruction or damage incurred as a result of hostilities as well as enforcing the restitution and compensation.

In addition, presently existing avenues appear to be not responsive to the circumstances of families having lost their property because of hostilities – especially in areas along the contact line. Moreover, the general procedure of claiming the compensation enshrined in Ukrainian legislation is subject to a three-year statute of limitations for civil cases, which makes this remedy for those who lost their property at the beginning of the armed conflict (in 2014) automatically inaccessible.

Several legislative initiatives offering certain solutions to housing, land and property (HLP) rights under the circumstances of protracted displacement are pending in the Parliament of Ukraine. However, these attempts appear to be

insufficient to move state policy towards the effective protection of HLP rights of the conflict-affected civilian population.

Such a situation, being inconsistent with international standards set out in the *European Convention on Human Rights*, *Guiding Principles on Internal Displacement* and *Pinheiro Principles*, further exacerbates the hardship in the daily lives of thousands of civilians who have lost their homes because of the armed conflict in eastern Ukraine.

NRC recommendations:

- Ukrainian authorities are called to take concrete legislative steps to establish an independent effective mechanism (possibly shaped as a mass claims commission) that will register and process HLP rights claims towards facilitating restitution and compensation for lost, damaged and destroyed property.
- Ukraine must also act urgently to deal with the legal concerns related to enforcement of HLP rights of the conflict-affected population and address the following issues:
 - introducing an exemption from the statute of limitations for conflict-related restitution and compensation claims (currently there is a three-year statute of limitations under the civil procedure legislation);
 - facilitating the access of concerned civilians to restitution and compensation for damages/destruction and/or costs incurred (e.g. utilities' bills) because of the occupation of property by the military, even when military presence within civilian areas is justified due to military necessity;
 - granting an exemption from the payment of court fees for the conflict-affected population and IDPs claiming compensation for lost, damaged or destroyed property.



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