



NRC

NORWEGIAN
REFUGEE COUNCIL



VOICES FROM THE EAST:

Challenges in Registration,
Documentation, Property
and Housing Rights of People Affected
by Conflict in Eastern Ukraine

2016

RIGHTS RESPECTED – PEOPLE PROTECTED

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List of abbreviations

NRC	The Norwegian Refugee Council	IDP	Internally displaced person
UN	United Nations	MoSP	The Ministry of Social Policy
UNHCR	The United Nations High Commissioner for Refugees	GCA	The government controlled areas
HLP	Housing, land and property	NGCA	The non-government controlled areas
ICLA	Information, counselling and legal assistance	ATM	The automated teller machine
		UXO	Unexploded ordnance
		ATO	Anti-Terrorist Operation

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Background



This document represents the summary of consultations between the Norwegian Refugee Council (NRC) and local, and regional executive and judicial authorities, international humanitarian actors, national nongovernmental organisations, civil society initiatives, internally displaced persons (IDPs) and conflict-affected population in Luhansk and Donetsk oblasts concerning pressing issues in regard to access to civil and other documentation, IDP registration and services related to housing, land and property (HLP) rights. The consultations were conducted throughout 2016 during 21 roundtables and workshops and over 400 other bi/multilateral meetings with local authorities and organisations that work to address humanitarian needs in eastern Ukraine, as well as direct interaction with 30,000 beneficiaries in the course of implementation of NRC Information, Counselling and Legal Assistance

(ICLA) Programme. The summary of challenges and recommendations “Voices from the East,” was finalized within roundtable held on 27 – 28 of October 2016 in Sviatohirsk with the participation of over 40 experts, including the representatives of international, regional and national governmental, inter-governmental and nongovernmental organisations, institutions, agencies and bodies.

This Report aims to provide qualified information and insights from a unique of the actors working in eastern Ukraine, many in frontline communities about the key challenges facing displaced and conflict-affected communities in eastern Ukraine that can inform the policies and practices of NRC and other humanitarian actors, as well as the Government of Ukraine.

Context

Two years after the outbreak of conflict in eastern Ukraine and without any clear perspective for conflict resolution in the immediate future, the displacement situation is becoming protracted and is likely to continue to become so unless longer-term planning is initiated and opportunities for durable solutions are explored and implemented.

Since March 2014, according to official statistics, some 2.7 million people have fled their homes within Ukraine and to neighbouring countries. As of 21 November 2016, Ukraine had 1,664,726 registered IDPs with the majority residing in urban areas. Of these, between 800,000 and one million reside more permanently in government controlled areas (GCA) and – for the most part - require durable solutions. Data from the Ministry of Social Policy (MoSP) indicate that persons receiving pensions are the largest group (66.5%), while children make up 9% and the disabled 3.2%. Significant numbers of IDPs chose not to register or were unable to do so. Both groups can be considered to be at risk of future displacement if the security situation deteriorates or if access to supplies, local services and assistance continue to diminish.



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A comprehensive Ukrainian IDP Law was passed in November 2014 and there is a unified IDP registration system in place providing legal recognition to IDPs, allowing them to access state support and government assistance, pensions and free housing for a period of up to six months, with extension options. The registration has not been without problems as certain categories of displaced persons are still unable or unwilling to register for various reasons, including administrative hurdles for persons who lack the required documentation, new-born children with birth certificates issued in NGCA and IDPs displaced within NGCA. IDPs who for various reasons are unable or unwilling to register have been unable to access pensions or State assistance, including both targeted financial assistance for IDPs and regular social welfare entitlements.

The most vulnerable IDPs are those without

savings and who are unable to rent apartments, instead typically residing in collective centres. These IDPs tend to represent pensioners, those with disabilities and single mothers. There remain data gaps in relation to profiling of IDPs' needs and protection concerns as the information collected for registration purposes is yet to be processed and made available by the authorities.

Many communities along the line of contact suffer from regular shelling and are deprived from basic life supporting services like water supply, electricity, medicine and other as violence continued in the region despite the attempts to establish viable ceasefire agreements.

Finally, lack of housing and land policy further exasperate the situation and negatively affect the HLP rights of both the IDPs and conflict-affected population.

Challenges

HOUSING, LAND AND PROPERTY

The conflict-affected population who has no access to their property in relation to conflict, may fall victim to looting or occupation, and yet be subjected to paying utility bills or real estate taxes. Local councils are failing to issue certificates of occupation or “uninhabitability” of housing units, which makes it impossible for the concerned person to obtain utility or tax relief. Moreover, income tax rules and regulations discourage landlords to enter into official lease agreement with IDPs, which puts the former at risk of eviction and prevent their access to subsidies.

Currently, there are no effective mechanisms for assessment and compensation or restitution for damaged, destroyed, occupied, or mine/UXO contaminated property. Nor is there a registry/database of damaged or destroyed housing. Without relevant certificates, the proprietors have no official documents substantiating their losses. In addition, IDPs have very limited possibilities to resolve their housing problem on their own, as there are no State programmes providing for beneficial loans for building, reconstruction or purchase of new homes.

CIVIL AND OTHER DOCUMENTATION, IDP REGISTRATION AND ACCESS TO RELATED SERVICES

Ukrainian citizens residing in NGCA who have lost their passports are in effect captives in that territory, as it is impossible for them to cross the contact line. Similarly, those who need to renew their passports or those who need to be issued their first passport, are subjected to administrative hurdles and financial burden associated with their prolonged stay

in GCA for the duration of the procedure for renewal/issuance of passport.

In addition to NGCA residents who do not have their identity documents, those who originate from NGCA but cannot obtain residence registration because of lack of appropriate mechanisms, cannot be registered as IDPs and enjoy their rights and entitlements. On top of that, the IDP registration and verification procedures unnecessary impedes the freedom of movement and places addition burden on affected population.

The current legislation equates pensions with social benefits regardless of their differing legal nature. Moreover, the procedure for obtaining social benefits and pensions for IDPs is complicated, leaving many without basic means of support.

Finally, there is no recognised status (and thus any assistance from the State) for individuals who have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights as a direct result of the conflict in eastern Ukraine.

While not new, the challenges presented here are voiced from a unique standpoint of those internally displaced and conflict-affected people and representatives of local and regional authorities, civil society and international community, who face them on a daily basis across urban and rural areas of eastern Ukraine. It is from this angle, that the stakeholders from eastern Ukraine offer their reasonable and practicable solutions to the most pressing issues concerning civil and other documentation, IDP registration and access to related services and housing, land and property.

Housing, Land and Property

TAXATION OF REAL ESTATE LOCATED ON THE CONTACT LINE AND THE TERRITORY BEYOND THE GOVERNMENT CONTROL

According to Article 266 of the Tax Code of Ukraine, real property tax payers are individuals and legal entities. The taxable item is residential or non-residential real estate, in full or in part.

The taxable base of residential or non-residential real estate owned by individuals shall be calculated by the supervisory authority based on the data from the State Register of Proprietary Rights to Immovable Property and/or original documents of ownership.

Persons who live along the contact line complain that the amendments to the tax regulations in 2016 caused the increase of property tax payments. The main change is an additional tax of UAH 25,000 for very large property.

In addition, non-residential premises are taxable as well. For example, if one villager owns not only a house, but also a chicken coop, a stable, garages, a summer kitchen, etc. with total area exceeding 500 sq. m., he/she must pay extra UAH 25,000 per year.

In addition, the maximum tax rate was increased from 2 to 3% of the minimum wages for each "excessive" square metre. This tax is collected by local councils,

and they can set the rate within the range of 0 to 3% (or UAH 41.34). But the tax preference remains: 60 sq. m. for a flat, 120 sq. m. for a house and 180 sq. m. for a house plus a flat (previous figures: 120 sq. m. for a flat and 250 sq. m. for a house). This means that individuals shall pay for each excessive square metre at new rates only in 2017, because this year citizens pay for their property at the rates valid in 2015. This means that the rate of real property tax per an excessive square metre is from 0% to 2% of the total area (i.e. up to UAH 24.36). These rates are also established by local councils.

According to Article 266 of the Tax Code of Ukraine, residential and non-residential real estate located in exclusion and unconditional (compulsory) evacuation zones defined by law is tax-exempt. Uninhabitable residential real estate, including due to unsafe conditions, recognized as such by the decision of the village, town or city council or the council of unified local community, is also tax-exempt.

It should be noted that as of today, under the exclusion zone laws, this includes zones of radioactive contamination due to the Chernobyl disaster.

However, today there is an urgent need to supplement the list of non-taxable residential and non-residential real estate with a category of settlements located in the settlements where the public authorities cannot temporarily exercise their powers, and the





settlements located on the contact line, which are listed in the Decree of the Cabinet of Ministers of Ukraine; as well as with a category of persons whose residential property was completely destroyed or partially damaged in connection with the conflict, although relevant decisions of local councils on the uninhabitable conditions are not provided in some of these cases.

In view of this, it should be emphasized that changes in the taxation system do not take into account the actual circumstances of the housing of the citizens affected during the armed conflict, and their income due to unemployment (closing of mines and other enterprises); the calculations include outbuildings; in addition, many houses in villages had been built more than half a century ago and were damaged during the military conflict in eastern Ukraine.

It should also be noted that today more than half of 1.5 million of internally displaced persons rent housing. However, under Article 266 of the Tax Code, tax preferences are not provided for individuals, if they use residential real estate for receiving income (rent, lease or loan). This means that an owner, who rents out his/her housing to internally displaced persons has no right to receive the real property tax preference and must pay it even if his/her flat or house has the area within normal limits (for tax preference) of 60 and 120 square meters.

Thus, the issues above require the following amendments:

- To the Law of Ukraine “On the Temporary Measures for the Period of the Anti-Terrorist Operation” by adding the article on the tax exemption on real property located in the settlements, in the territory where public authorities cannot temporarily exercise their powers, and the settlements located on the fighting line;
- To the Tax Code of Ukraine by adding a category of residential and non-residential real estate that is not subject to taxation.

DAMAGE RECORDING, ASSESSING AND COMPENSATION PROCEDURES

According to the study of the National Academy of Sciences of Ukraine, and on the basis of data provided by the Ministry for Regional Development, Building and Housing of Ukraine, as of September 2014, 14 cities of regional subordination (1,600,000 persons) and 8 districts (350,000 persons) in Luhansk oblast, 21 city (3,390,000 persons) and 13 districts (520,000 persons) out of 28 cities of regional subordination (3,670,000 persons) and 18 districts (650,000 persons) in Donetsk oblast suffered considerable damage due to the military operations.

However, no public authority has reliable or accurate data on the rate of destruction.

According to the Press Office of the President of Ukraine dated March 2016, the military operations in Donetsk oblast resulted in the destruction and damage of almost 8,500 residential houses (about the same figure was given at the meeting of the Parliamentary Committee on Construction, Urban Development, Housing and Communal Services in May 2016). Regarding Luhansk oblast, according to the information given at the meeting in May 2016, the figure of 6,857 buildings was announced, and other sources say 7,500 houses.

However, no official monetary data on the damage inflicted on housing are available, and government officials are yet to specify the ways of state compensation for material and moral losses – housing, jobs, relatives and friends – to the citizens, who left the uncontrolled territory, and those who stayed on the contact line.

The key international human rights legislation, in particular, the Universal Declaration of Human Rights (Art. 17)



established the following: “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.”

The Guiding Principles on Internal Displacement of Persons developed by the Representative of the UN Secretary General and adopted in 1998 define the rights and guarantees of internally displaced persons, and reflect international norms for human rights to be applied by the states that faced the displacement of persons within their country, by other government authorities, groups of persons or individual persons in their relations with IDPs.

In particular, according to Principle 21, no person shall be deprived of his/her assets or property. Under any circumstances, assets and property of internally displaced persons must be protected from any acts such as looting; direct or indiscriminate attacks or other acts of violence; the use to cover military operations or objectives; punitive actions; destruction or expropriation as a type of collective punishment. Assets and property of IDPs should be protected from destruction, expropriation, appropriation or use.

Moreover, such issues as the lack of compensation payments for damaged or destroyed property, military expropriation of civilians’ property or land, contamination of agricultural land with non-detonated ammunition, inability to solve the issues related to the property in the uncontrolled territory (sales, purchase, inheritance) are yet to be addressed for persons who were displaced or who remained in the high risk area because they cannot afford leaving their homes for fear of losing the last means of living.

Article 41 of the Constitution of Ukraine stipulates that no one shall be unlawfully deprived of their property rights. The right to private property shall be inviolable. Private property may be expropriated only as an exception for the reasons of social necessity, on the grounds of, and according to the procedure established by law, and on terms of advance and complete reimbursement of the value of such property. Such property may be expropriated with subsequent complete compensation of its value only under conditions of martial law or an emergency state.

Article 47. Everyone shall have the right to housing. The State shall create conditions enabling every citizen to build, purchase, or rent housing.

No one shall be arbitrarily deprived of housing other than on the basis of the law pursuant to a court decision.

Article 48. Everyone shall have the right to a standard of living sufficient for themselves and their

families including adequate nutrition, clothing, and housing.

These norms are also reflected in the housing and civil legislation.

Given the above, it is necessary to state that the starting point, an integral part and a major prerequisite for the restoration of property rights of victims in the future should be the recording of damages and losses.

Today, however, there is no applicable statutory procedure for the establishment and recording of damages and the amount of losses (property damage) caused to individuals as a result of the armed conflict in eastern Ukraine.

The absence of legally standardized recording procedure for damages and losses may show the absence of government decisions and political will of the top officials to choose, in the nearest future, the vector towards ensuring constitutional rights of citizens to possess, use and dispose of their property, including through compensation for property damage caused to individuals as a result of the conflict, renewal of housing and/or other alternative measures.

The lack of supporting evidence of property damage may lead to negative consequences in the future in terms of exercising property rights – failure to provide adequate housing (for the replacement of lost or damaged one), payment of compensation for property damage, renewal or reconstruction of the damaged property, etc. Thus, further compensation for damages to individuals, whose housing (individual houses, flats, residential rooms in dormitories, etc.) have been damaged (destroyed) during the conflict in the cities of Donetsk and Luhansk Oblasts, from the state and local budgets will be impossible.

In some cases, local government and executive bodies do not keep records of the housing damaged (destroyed). For example, as of September 2015, no relevant certificates were prepared in the village of Pshenychne in Stanytsia Luhanska district and 7 horticultural societies, which belong to its territory (80 houses).

By June 2016, after the shelling on 21 January 2015 in the town of Novotoshkivske in Popasna district (Luhansk oblast), no officials visited the residents of the destroyed 8-apartment building, and no certificates were drawn up.

The certificates were drawn up only in May 2016 for Zolote-4 at Nadii Street.

Where local government of Luhansk and Donetsk oblasts keep records of the facts of destruction or



damage to the premises by preparing certificates under the citizens' statements drawn up in any form, they are different in form and content and have no assessment of the damages caused.

In this context, an example of prompt addressing of problems related to the enforcement of human housing rights during natural disaster in Western Ukraine in 2008 should be given.

Within one week after the flood, in particular, as of 30 July 2008, the Resolution of the Cabinet of Ministers of Ukraine No. 688 approved the Procedure for inspection of property damaged due to the disaster occurred on 23-27 July in the western oblasts and thereby established the inspection procedure for residential houses and flats (parts thereof) regardless of ownership, outbuildings, utilities, social and cultural facilities and lands allocated to citizens for private farming, fruit and vegetable gardening, haying, cattle grazing and commercial farming damaged in the disaster in July 2008; regulated the work of committees in terms of the powers of public and local government; represented the results of surveys, etc.

Therefore, development of the regulatory legal act for the procedure for recording and assessment of damages caused to the housing and other real estate and movable property, land, etc. is still an important and pressing issue today.

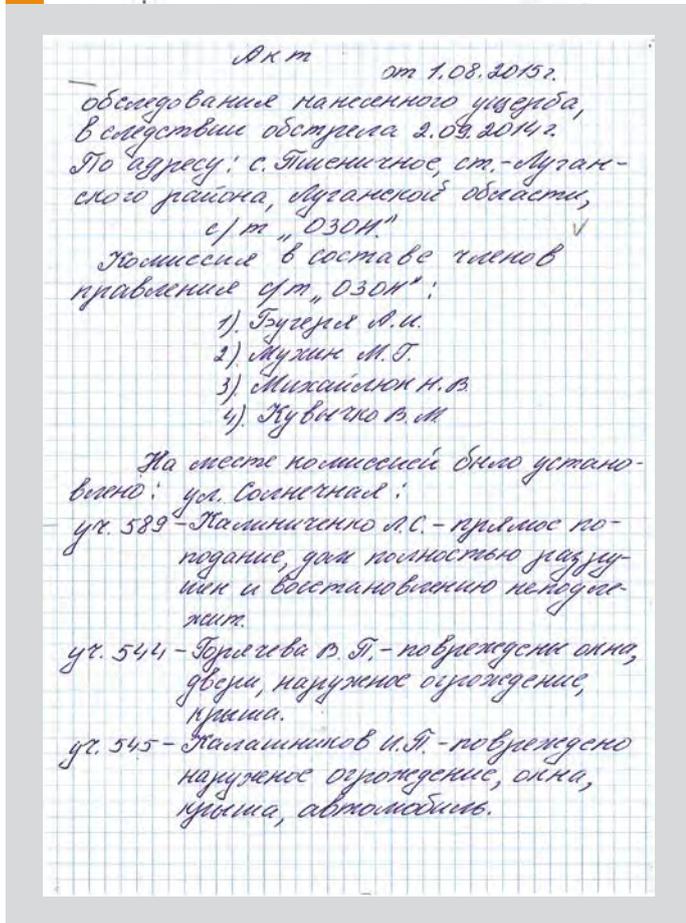
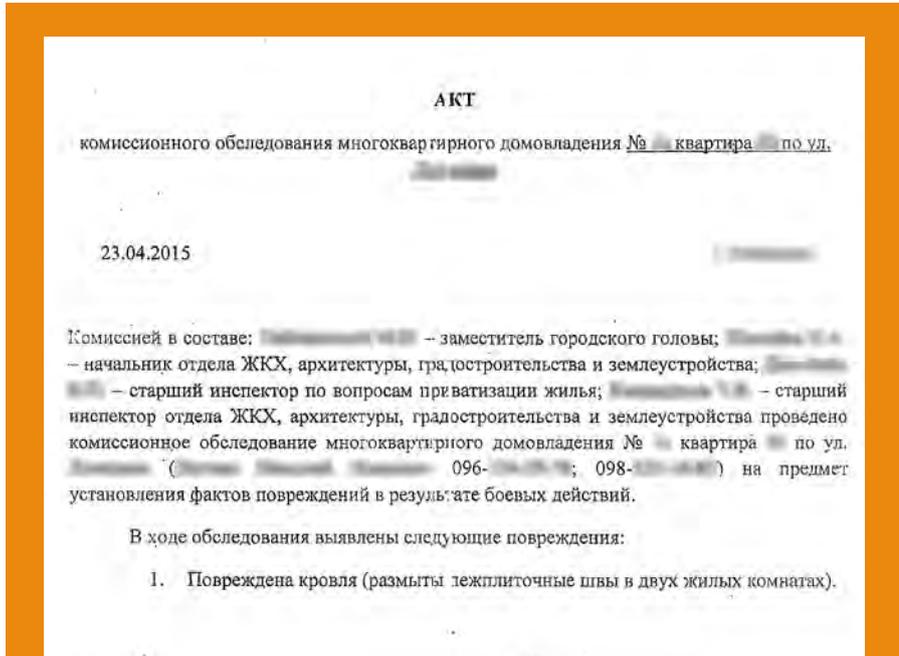
The Resolution of the Cabinet of Ministers of Ukraine No. 1094 dd. 16 December 2015 approved the Comprehensive State Programme of support, social adaptation and reintegration of citizens of Ukraine displaced from the temporarily occupied territory of Ukraine and the areas of conflict to other regions of Ukraine for the period up to 2017. However, the 2016

state budget does not envisage any expenses for the implementation of this Programme, which is intended for two years only. Some clauses do not even indicate timeframes, milestones and responsible persons.

The objective specified in Clause 20 of the Action Plan "Compensation to the Displaced Citizens Taking into Account the Harm Caused by Military Operations and Temporary Occupation of the Part of Territory of Ukraine" requires implementation of the measure of "legislative regulation of the procedure for the evaluation of material and moral damage caused by the military operations and temporary occupation of the part of territory of Ukraine." The Resolution of the Cabinet of Ministers of Ukraine assigned its implementation to the State Property Fund of Ukraine. The report on the implementation of the Action Plan for the II quarter of 2016 stated that the State Property Fund of Ukraine was working on the development of the draft bill. In this regard, non-government organizations get more options for cooperation and support of the working group in the development of not only this draft bill, but also other project initiatives envisaged by this policy document.

The Recording Procedure or the Examination Procedure, as well as the procedure (method) for the assessment of financial damage caused by the conflict should be the basis of creating the Register of Destroyed or Damaged Property, and calculating objective financial damage.

According to Article 19 of the Law of Ukraine "On the Fight Against Terrorism", the damage caused to citizens due to a terrorist attack shall be compensated from the State Budget of Ukraine in accordance with law. However, it should be noted that this law has not



been adopted yet.

It should also be noted that the Law “On the Rights and Freedoms of Internally Displaced Persons” lacks clauses on the right to compensation for property damage caused to individuals as a result of the conflict, recovery or provision of other appropriate housing (to replace the destroyed one), etc.

However, a number of bills regarding compensation for housing damaged as a result of armed conflict has been developed.

Draft bill No. 2167 offers to amend the Law of Ukraine “On the Rights and Freedoms of Internally Displaced Persons” so that in case of damage to the property of internally displaced persons, which they left in the territory of the administrative-territorial unit, from which they were displaced, they shall be entitled to the compensation for damages in the value of such property. For this purpose, according to the draft bill No. 2167, the Cabinet of Ministers is responsible for the development of the procedure for indemnification and compensation for the property value.

November 11, the Parliament (Verkhovna Rada) registered the bill No. 3434 “On the Amendments to the Law of Ukraine “On the Fight Against Terrorism” related to compensation for housing damages Caused by ATO.” The purpose of this bill is to provide legal regulation for the compensation for the housing damaged during the conflict and authorization of the Cabinet of Ministers to determine practical procedures for such indemnification or compensation.

The draft bill No. 4301 “On the Compensation for Losses of Destroyed or damaged Private Housing to Persons, Whose Private Housing or Private Households Have Been Damaged (Destroyed) during the

Anti-Terrorist Operation” was registered as of 24 March 2016. “The damages shall be compensated following the results of the specially created commission’s examination of the buildings located in the settlements of the relevant territory of Donetsk and Luhansk regions, except for those included in the list of settlements where public authorities cannot temporarily exercise their powers, and the list of settlements located on the fighting line approved by the Cabinet of Ministers of Ukraine. Compensation for damages in settlements included in these lists shall be carried out in the same order as they were liberated from occupation.”

Therefore, NGOs currently have more options for cooperation and support of the working group in the development of the preferable bill.

EASY-TERM LOANS FOR IDPs

According to Article 47 of the Constitution of Ukraine, everyone shall have the right to housing. The State shall create conditions enabling every citizen to build, purchase, or rent housing.

Since February 2016, IDPs have had an opportunity to receive loans for purchase or repair of housing at 3% per annum in Ukraine. According to the Regulations for providing long-term loans to individual housing builders in rural areas approved by the Resolution of the Cabinet of Ministers of Ukraine No. 1597 dd. 5 October 1998, individual rural developers are entitled to state easy-term loans provided that they live (or move for permanent residence) in rural areas within villages and outside villages in remote farming estates, and also confirm their solvency. The loan amount is UAH 300,000 for construction of a new house, UAH 150,000 for reconstruction of a house or completion of the construction in progress, UAH 200,000 for the purchase of a house, and UAH 50,000 for construction of utilities and their connection to the existing utility systems.

The amendments made are in line with Article 17 of the Law of Ukraine “On the Rights and Freedoms of Internally Displaced Persons” in terms of contributing to the process of granting loans to internally displaced persons for the purchase of land, and purchase or construction of housing.

However, most persons who moved from the settlements, where public authorities temporarily cannot exercise their powers and the settlements located on the contact line are city dwellers, most of whom are coal miners. Therefore, there is a need for developing the draft bill regarding the regulations for granting long-term loans to individual developers, without limitation of construction, completion or repair of housing to the rural areas. It would be reasonable to address the Ministry for Regional Development, Building and Housing of Ukraine with an offer to establish a working group and prepare the above draft bill.

ESTABLISHMENT OF THE REAL ESTATE REGISTER

According to Clause 11 of the Action Plan “Enforcement of the Displaced Citizens’ Rights to Housing”, the Real Estate Register (construction in progress, abandoned housing, cottage towns, etc., newly built modular houses for part-time residence) shall be established, and schemes for its lease on a preferential basis shall be developed. Such housing is especially essential for persons with disabilities.



According to Article 335 of the Civil Code of Ukraine, an ownerless thing is a thing that has no owner or the latter is unknown.

Ownerless real estate shall be registered by the body responsible for state registration of the real estate upon application of the local government, on which territory this real estate is located.

Registration of the ownerless real estate shall be announced in the printed media. In one year after registration of the ownerless real estate, the latter can be transferred to the municipal property by the court decision upon application of the body authorized to manage the property of the relevant territorial community.

To register the ownerless real estate, local government shall submit an application to the state registration body on the registration of ownerless real estate.

Following the review of the application for the registration of ownerless real estate, the state registrar shall decide on the registration of ownerless real estate, or refuse to register the ownerless real estate.

Based on the decision made on the registration of ownerless real estate, the state registrar shall make an entry to the special section of the State Register of Proprietary Rights to Immovable Property (hereinafter – the State Register of Rights) and open a registration file.

The date and time of registration of ownerless real estate is the time of receipt of the application for registration of ownerless real estate by the state registration body.

In addition, it should be noted that one year after

PROPERTY “EXPROPRIATION”

the registration of ownerless real estate, the latter may be transferred to the municipal property by the court decision. The legal fee for such proceedings is 1.5% of the value of claim, but not less than 1 minimum wage. In addition to the legal fee for filing a lawsuit on the transfer of the ownerless real estate to the property of the territorial community, pre-court regulatory monetary evaluation of the property shall be conducted and necessary documents shall be prepared.

Furthermore, pursuant to Article 1277 of the Civil Code of Ukraine, if there are no testamentary or legal heirs or they are divested of the right to succession, as well as in case of non-acceptance of inheritance, or refusal from acceptance, the court may declare the inheritance escheat by application of the relevant local government at the place of opening of the inheritance.

Today, most local authorities in Luhansk and Donetsk Oblasts have no position of a lawyer. So lawyers of NGOs can join the process of provision of legal assistance to local communities in the preparation of claims for the transfer of ownerless real estate to the property of the local community and the acknowledgment of inheritance escheat. The assistance to local communities in paying legal fees by using grant funds from NGOs would be helpful, as the funds for such expenses are not provided neither in local budget nor in the state budget; the funds are also needed for the repair of such housing.

The standardization of work for the preparation of data on the registration of real estate (abandoned residential buildings) reasonably requires developing the Model Provisions on the registration of ownerless real estate and the inheritance escheat and the transfer thereof to the municipal property in the territory of the relevant local community in order to help local government.

The Provisions shall specify the detailed procedure for identification of ownerless real estate and the inheritance escheat; the procedure for registration of ownerless real estate and the inheritance escheat; the procedure for the use of ownerless real estate and the inheritance escheat during they are registered; the procedure for the use of the property transferred to the municipal property.

Such work could be arranged in cooperation with the Ministry for Regional Development, Building and Housing of Ukraine and regional state administrations.

This property may be further rented out on a preferential basis for IDPs, or IDPs may acquire ownership in the event of property privatization.

Article 41 of the Constitution of Ukraine stipulates that no one shall be unlawfully deprived of the right to property. The right to private property shall be inviolable. The expropriation of private property may be applied only as an exception for the reasons of social necessity, on the grounds of, according to the procedure established by law, and on terms of advance and complete reimbursement of the value of such property. Such property may be expropriated with subsequent complete reimbursement of its value only under conditions of martial law or an emergency state.

Citizens complain about the loss of access to their property both in the territory uncontrolled by the Ukrainian government and in communities on the contact line. The cases of expropriation and occupation were reported about residential buildings (flats, residential houses, land). The military occupied housing in Krasnohorivka, Pisky, Hostre in Donetsk Oblast. For example, citizens of Hostre complained that the military had occupied housing, and after they had left, the house owners had been demanded to pay for the municipal services; the same settlement (Hostre) also has a school which is occupied by the military, and children have to go to school in another village; the business property (Hirske Café, Luhansk oblast) and private agricultural land (gardens where tanks are deployed or had been deployed before and left 3 meter caponiers).

It is difficult to clearly understand the scope of expropriation. People are afraid to speak up, but in the cases above the owners were not offered any compensation or alternative accommodation, or official documents.

Expropriation is a forced seizure of property by the State (took place during the October Revolution). Requisition and confiscation are two types of expropriation.

Requisition and confiscation are defined in Articles 353, 354 of the Civil Code of Ukraine.

Requisition takes place under conditions of martial law or an emergency state and is conducted on the basis and in the manner prescribed by law, subject to the advance and complete reimbursement of the requisitioned property.

It should be noted that Ukraine has no requisition laws. Therefore, the possibility of expropriation of property under the requisition procedure is excluded.

According to the Law of Ukraine “On the Fight Against Terrorism”, for the duration of the conflict,



its area may be subject to a special procedure, in particular, a patrol security service and a blockade may be established. Rights and freedoms of citizens in the conflict area may be temporarily restricted.

This law also provides that the officials in the conflict area, who are involved in the operation, are entitled to:

- use, for the ATO-related purposes, the means of communication and vehicles, including special ones belonging to citizens (with their consent), enterprises, institutions and organizations (except for vehicles of diplomatic and consular officials and other representative offices of foreign states and international organizations) in order to prevent terrorist attacks, pursue and detain persons suspected in committing a terrorist attack, or transfer persons requiring emergency medical aid to medical institutions, as well as to get to the crime scene;

- enter (get into) residential and other premises or lands owned by citizens when a terrorist attack is over and when pursuing persons suspected in committing this attack in the territory and premises of enterprises, institutions and organizations; check vehicles, if delay may create a real danger to human life or health.

In addition, the Decree of the President of Ukraine dd. 14.04.2014 enacted the Decision of the National Security and Defense Council of Ukraine "On Urgent Measures to Overcome the Terrorist Threat and Preserve the Territorial Integrity of Ukraine" dd. 13 April 2014. In addition, the Resolution of the Cabinet of Ministers of Ukraine No. 1275 dd. 2 December 2015 approved the list of settlements where the conflict has been carried out (Donetsk, Luhansk and a part of Kharkiv regions).

It should also be noted that Ukraine has the Law "On Transfer, Expropriation or Seizure of Property under the Legal Regime of Martial Law or Emergency State."

According to this law, property may be expropriated under the legal regime of martial law or an emergency state with the advance and complete reimbursement of its value (if impossible, with further complete reimbursement of its value).

However, neither regime of martial law nor an emergency state is imposed today.

In addition, Ukraine has valid general provisions for the property rights protection.

The Civil Code of Ukraine stipulates that ownership is the right of person for an item (property), which he/she shall lawfully exercise on his own will, regardless of the will of other persons.

The government registered the Bill No. 5115 dd. 13 September 2016, which amended the Law "On Transfer, Expropriation or Seizure of Property under the Legal Regime of Martial Law or Emergency State", with the Parliament of Ukraine.

In case of the adoption thereof, the military administrations will be authorized to forcibly alienate and confiscate property in case if martial law is applicable (independently or with the assistance of executive bodies and local government). They will have similar authority in the military engaged areas. If martial law is applicable or during an emergency state, the military administrations of settlements, districts and regions will be able to decide on the transfer of property of relevant local communities to the state property.

However, the draft bill stipulates only the transfer of municipal property to the state property and the

registration in the form of Acceptance Certificate, but does not address the lack on the registration of occupation (confiscation) of private property or land for the defense purpose. No regulations exist for the determination of prerequisites of payments for further complete compensation for the property forcibly alienated during the conflict.

Thus, representatives of NGOs currently should join the process of making offers to the presentation of the draft bill regarding the inclusion of norms on private property seizure procedures.

There is a hazard of mines and non-detonated ammunition in agricultural lands and gardens remains, which also has an impact on the possibility of returning there and limits access to the property.

For example, a third of local residents of Syze and Bolotenne villages (Valuiske Village Council, Luhansk oblast) remained there. They cannot properly cultivate their gardens, because they know that there are mine-studded areas there. In Krymske (Novoaidar district), land shares are fenced off with barbed wire with minefield signs, and military equipment is there, as well as the land in Popasna district has military equipment, so people can neither cultivate the land, nor receive income from its rent.

In order to compensate 3 years lost income to land owners, it would be reasonable to develop the Resolution of the Cabinet of Ministers of Ukraine on the allocation of funds to provide single financial aid to persons, whose lands are used for defensive purposes at the expense of the state budget reserve fund.





УКРАЇНА

Контрольний пункт в'їзду-виїзду «Станично - Луганське 2»

Режим роботи: світлий час доби.

Види контролю: державний контроль.

З питань пропуску через контрольний пункт в'їзду-виїзду громадяни можуть звертатись за телефоном:

Луганський прикордонний загін (06461)23993, 0976792253

Східне регіональне управління (м. Харків) – (057) 7020558

Адміністрація ДПСУ – (044)5276363

Контрольный пункт въезда-выезда «Станично - Луганская 2»

Режим работы: светлое время суток.

Виды контроля: государственный контроль.

По вопросам пропуска через контрольный пункт въезда-выезда граждане могут обращаться по телефонам:

Луганский пограничный отряд (06461)23993, 0976792253

Восточное региональное управление (г. Харьков) – (057) 7020558

Администрация ГПСУ – (044)5276363

Civil Documentation

IMPOSSIBILITY TO CROSS THE CONTACT LINE FOR PERMANENT RESIDENTS OF THE TERRITORY UNCONTROLLED BY UKRAINIAN AUTHORITIES WHO LOST THEIR PASSPORTS

In conformity with the requirements of the Temporary Procedure on control over movement of persons, transport vehicles and cargoes (goods) across the contact line within Donetsk and Luhansk oblasts, as approved by Order No. 415go of the First Deputy Director of the Antiterrorist Centre of the Security Service of Ukraine (Chief of the Antiterrorist Operation in the territory of Donetsk and Luhansk Oblasts) of June 12, 2015, citizens of Ukraine (on issuing an ID) and foreigners and stateless persons (on producing a passport or another document that replaces it, in accordance with Clause 1 of Article 2 of the Provision on Frontier Regime approved by Resolution No. 1147 of the Cabinet of Ministers of Ukraine of July 27, 1998), as well as on condition of recording data of such persons in the electronic register, shall have the right to free and unobstructed crossing of the collision line via blockhouses and security checkpoints. To record a person in the electronic register, one needs to register at the web portal of the Security Service of Ukraine and file an application, either in person or by mail, to the coordination centre, or coordination group, or the security checkpoint, or the first line blockhouse. The application shall contain passport series and number, among other information.

Nevertheless, there have been cases when the permanent resident of the territory uncontrolled by the Ukrainian authorities lost his/her passport due to various reasons. Such individuals are bound to be stuck in a vicious circle: due to the fact that the state authorities do not perform their obligations in this territory, individuals need to visit the controlled territory to get a new passport. Meanwhile, to cross the contact line, a passport is needed.

When military operations began, Tetiana, mother of 8 children, born in 1978, and her children

were forced to leave the city of Horlivka to a safer place – Kramatorsk, where they settled at the common residence centre. At the same time, Tetiana's husband who is a citizen of Azerbaijan could not cross the demarcation line because he had lost his passport. Desperate to join his family, the man risked his life and travelled to the controlled territory by bicycle, crossing minefields and avoiding established security incoming/outgoing checkpoints.

Oksana, born in 1983, permanently residing in the village of Zaitseve which is administratively related to the city of Horlivka, lost her passport during a fire. The woman only had a copy of her passport. Mykhailo, born in 1974, a permanent resident of the Village of Makiyivka, also lost his passport. Citizens cannot even travel to the controlled territory to get a new passport.

One of the ways to deal with this problem is to make amendments to the specified Temporary Procedure and stipulate a possibility for those who lost their passports to cross the contact line by decision of the chief of coordination centre on condition of issuing any ID containing a photo, full name and other data about the holder, or a copy of such document, or to confirm one's identity by testimony of witnesses, when crossing the line at a security checkpoint or a blockhouse.

IMPOSSIBILITY TO REGISTER PLACE OF RESIDENCE IN THE TERRITORY UNCONTROLLED BY UKRAINIAN AUTHORITIES

Starting from April 4, 2016, Law No. 888-19 On Amendments to Several Legislative Acts of Ukraine on Extension of Authorities of Local Self-Government Agencies and Optimization of Administrative Services of December 10, 2015, has entered into force in Ukraine. This Law amends the Law of Ukraine on Freedom of Movement and Free Choice of Residence in Ukraine (hereinafter referred to as the "Law"). To adhere to the Law, the Cabinet of Ministers released Resolution No. 207 of March 02, 2016, which approved the Rules of Registration of Residence.

In accordance with the Law, starting from April 4 of the current year, the State Migration Service of Ukraine has lost its functions to register places of residence for citizens. This function has been transferred to local self-government agencies (executive agency of village, settlement or municipal council, or a village chief) which perform registration or de-registration of the place of residence of a person in the territory of respective administrative and territorial unit covered by authorities of the respective village, settlement or municipal council.

Article 6 of the Law establishes an obligation for persons to register their place of residence within 30 days after de-registration and arrival to a new place of residence. Registration of place of residence for newborn children shall be performed within three months from the date of state registration of birth.

Article 11-1 of the Law stipulates administrative fees paid by individuals in various amounts depending on the terms of their application; in case of application with violation of the established registration term the fee will be higher. The Law does not provide for any extraordinary reasons to violate terms of application.

Along with this, despite the obligation of all budgetary institutions located in settlements where governmental authorities do not temporarily fulfill their official obligations, to re-register to settlements where governmental authorities fulfill their obligations in full, as established by Resolution No. 595 of the Cabinet of Ministers of Ukraine of November 7, 2014, the dominating majority of local self-government agencies have not left the uncontrolled territory.

Thus, the Law creates a collision that lies in the impossibility of its application to certain categories of

IDPs – newborn children, IDPs documented by a passport (or an ID card) for the first time or to replace lost IDs, all persons who have housing located in the territory of administrative and territorial units uncontrolled by governmental authorities and self-government agencies, as the authorities of registration agencies are limited by the territory of their administrative units.

Negative consequences for the specified IDP categories include residence on the territory of Ukraine without mandatory registration of residential place, which leads to administrative liability and inevitable increase of the administration fee in case of registration overdue of the place of residence in the future; moreover, in some cases, the lack of registration of a place of residence would also lead to impossibility to implement rights and receive social benefits.

After the beginning of the armed conflict, Halyna, born in 1951, left the city of Horlivka where she had a registered place of residence to the city of Kramatorsk where her relatives live. Relatives gave her home and even agreed to register her place of residence in their own apartment to simplify her access to social benefits and services. But in summer of 2016, due to the increase of utility service fees which are paid based on the number of persons registered in a house, the housing owners asked the woman to leave the house and de-register. As Halyna does not have her own place to stay in the territory controlled by the Ukrainian authorities, the only place where she can register residence is her apartment in the city of Horlivka. However, the authorized agency of the Kramatorsk Municipal Council denies her registration of a place of residence, as the house is located outside the respective administrative and territorial unit. In its turn, due to the missing note in her passport regarding registration of a place of residence, Oschadbank (State Savings Bank) which is the only authorized bank to pay pensions to IDPs also refused to open a current account for Halyna. Thus, due to the lack of a registered place of residence, Halyna is deprived of a chance to receive her due pension payment.

Svitlana, born in 1971, left the City of Donetsk to the City of Odesa. Svitlana's child received a passport of a citizen of Ukraine, but, due to the lack of housing in the controlled territory of Ukraine, there was no note in the passport regarding registration of a place of residence. As there was no such note, the respective agency of the State Migration Service refused to issue a passport of the citizen of Ukraine for travelling abroad

to Svitlana's son.

Son of Nataliia, born in 1977, whose family left the city of Donetsk to the city of Yampil of Lyman district of Donetsk Oblast, received the passport of a citizen of Ukraine when he turned 16,. But he could not register his place of residence due to lack of housing in the controlled territory of Ukraine.

This problem could be easily resolved by amending the Law of Ukraine on Freedom of Movement and Free Choice of Residence in Ukraine, and the Rules of Registration of Places of Residence, approved by Resolution No. 207 of the Cabinet of Ministers of Ukraine on March 2, 2016, regarding return of the function of registration of residential places to the agencies of the State Migration Service in the part of registration of residential places in the uncontrolled territory.

COMPLICATED PROCEDURE TO RECEIVE PASSPORT BY PERSONS, WHO ATTAINED THE AGE OF 14 (TILL OCTOBER 1, 2016 – THOSE, WHO ATTAINED THE AGE OF 16) AND RESIDE PERMANENTLY IN THE TERRITORY UNCONTROLLED BY UKRAINIAN AUTHORITIES, AS WELL AS CROSSING THE CONTACT LINE BY PERSONS WHO RECEIVED THEIR FIRST PASSPORT

In conformity with the Provision on Ukrainian Citizen Passport, approved by Resolution No. 2503-XII of the Verkhovna Rada of Ukraine on June 26, 1992,

before October 1, 2016, passports of citizens of Ukraine were issued to each citizen of Ukraine by the central executive agency that implements state policy of citizenship, after reaching the age of 16. Issuance and replacement of passport were performed within one month. To receive the passport, citizens had to apply to the authorized agency in person.

In accordance with Article 21 of the Law of Ukraine On the Uniform State Demographic Register and Documents Confirming Citizenship of Ukraine, ID or Personal Status (in the wording effective since October 1, 2016), each citizen of Ukraine who reached the age of 14 is obligated to receive a passport of a citizen of Ukraine.

In accordance with Clause 17 of the Procedure of execution, issuance, replacement, postage, withdrawal, return to the State or destruction of a passport of a citizen of Ukraine, as approved by Resolution No. 302 of the Cabinet of Ministers of Ukraine of March 25, 2015, to receive a passport, the person, who attained the age of 16, has to apply to the authorized agency in person. Regarding issuance of passport to the person under the age of 16, one of such person's parents (foster parents), guardians, caregivers or other legal representatives (hereinafter referred to as the «legal representatives») has to apply to the authorized agency. If the parents of the person under the age of 16 are not married, the application shall be filed by the parent with whom such person resides. Nevertheless, considering the fact that the application on passport issuance, and later the passport itself, must contain digital photo of the passport holder's face, the child has to be present anyway when applying for passport issuance.

In accordance with the legislative amendments, starting from October 1, 2016, the passport is issued in the form of an ID card no later than 20 calendar days from the date of execution of a respective application or no later than 10 working days from the date of execution of such application for urgent reception. At that, urgent issuance shall be chargeable; the cost of the administrative service makes 0.2 of the amount of minimal salary (i.e. UAH 290; starting from December 1, 2016 – UAH 320).

Meanwhile, as the fee rates for the administrative service of urgent passport issuance were not approved before October 1, 2016, the departments of the State Migration Service practiced passport issuance within 30 days.



It should be worth mentioning the absence of sufficient awareness of changes in the Ukrainian legislation among residents of uncontrolled territories, so in many cases they simply do not know that the age when the first passport is received has been reduced. However, in accordance with clause 16 of the Provision on Ukrainian Citizen Passport, approved by Resolution No. 2503-XII of the Verkhovna Rada of Ukraine of June 6, 1992, to receive a passport, a citizen needs to file the necessary documents no later than one month before coming of age. So, the individuals which permanently reside in the uncontrolled territory of Ukraine, may still wait until children turn 16 before they apply for a passport, just like before .

Movement and/or travel of Ukrainian citizens across the conflict area in Luhansk and Donetsk Oblasts shall be performed on the basis of the Temporary Provision on Control over Movement of Persons, Transport Vehicles and Cargo (Goods) across the Contact Line within Donetsk and Luhansk Oblasts.

As it was stated above, citizens of Ukraine may cross the contact line by receiving ID documents, while foreigners and persons without citizenship may receive a passport document or any other document that replaces it. Another mandatory condition for crossing the contact line is the entry of data on such person to the electronic register, in particular, the specified data shall contain information on the series, number, date and agency of passport issuing.

By general rule, permission to a natural person to cross the contact line shall be issued within 10 days (within 24 hours – in case of death or illness of close relatives and visiting their places of burial).

Thus, before October 1, 2016, there was a common problem, when a person, who attained the age of 16 could travel to the controlled territory to receive a passport, but could not return to the uncontrolled territory before the passport was issued and ready. Practically, such person had to stay in the controlled territory until reception of passport, and then for 10 more days while waiting for the respective permission to cross the contact line to be executed. I.e. the person had to stay in the controlled territory for a month or more, and often was forced to rent housing, reside in an unfamiliar place, break the studying process, etc.

For example, Oksana, born in 1967, and her two children reside in the city of Donetsk. Oksana's daughter attained the age of 16, but to get her passport she has to travel to the controlled territory. It has become a real

problem for Oksana and her family as she also had a small son whom she could not leave in Donetsk for such a lengthy period necessary to get a passport and a permission to cross the contact line. Practically, the whole family had to travel to the controlled territory and stay there for some time so that the elder child could get her passport, thus bearing essential financial losses.

After October 1, 2016, the problem was transferred to somewhat other dimension as the exit from the uncontrolled territory and travel to the controlled territory by children under the age of 16 was possible by producing a birth certificate and in the company of an adult, while the entry of children to the uncontrolled territory is subject to requirements stipulated for such persons by the Rules of State Frontier Crossing by Citizens of Ukraine, as approved by Resolution No. 57 of the Cabinet of Ministers of Ukraine as of January 27, 1995 (hereinafter referred to as the «Rules»). The specified Rules stipulate that departure of persons under the age of 16 from Ukraine is possible only in the company of both parents or with their permission. A child from a complete family may leave the country accompanied by only one parent with the consent of the other parent certified in writing by a notary. At that, in accordance with Orders of the Ministry of Justice of Ukraine No. 247/7 and No. 246/7 of November 25, 2014, all the institutions of justice were evacuated from the uncontrolled territory, while the operation of all Registers of the Ministry of Justice of Ukraine was terminated in the respective territory in accordance with Order No. 953/5 of June 17, 2014. So, to execute a permit for the child to cross the contact line, the child's parents have to travel to the territory controlled by Ukrainian authorities. Thus, to execute a passport for a child, not only the child but both his/her parents have to travel to the controlled territory as the child has to return to his/her permanent place of residence either accompanied by both parents, or with their written consent certified by a notary.

The specified legislative provisions complicate the lives of those who permanently live in the territory uncontrolled by Ukrainian authorities as they lead to significant financial load for the families related to costs of travelling to the controlled territory, getting a notary certification, temporary stay in the controlled territory, loss of income by parents due to their absence from work etc.

To resolve this problem, it is necessary to allow submission of documents and reception of passport for

the person who permanently resides in the uncontrolled territory and reached the age of 14, without the mandatory presence of such person. In particular, amendments have to be made to the Procedure of execution, issuance, replacement, postage, withdrawal, return to the State or destruction of passport of a citizen of Ukraine, as approved by Resolution No. 302 of the Cabinet of Ministers of Ukraine of March 25, 2015, as well as to allow inclusion of digital image of the person's face by means of photo scanning. In that case, the permanent place of residence of the person in the uncontrolled territory may be confirmed by a note on registration of the place of residence in the passport of legal representative who files the application on passport reception.

Also, persons who receive their first passport and permanently reside in the territory uncontrolled by Ukrainian authorities should be exempted from administrative fees for urgent execution of the passport of a citizen of Ukraine.

The Temporary Procedure should be supplemented with a new provision which allows travelling to the uncontrolled territory by persons, who attained the age of 14 and who receive (or have already received) their passports of citizens of Ukraine for the first time, on condition of producing passports

of citizens of Ukraine, without having to produce the duly executed permit or pass. Such persons should be granted the right to cross the contact line via blockhouses and security checkpoints accompanied by one of their parents, without any consent of the other parent with a notarial certification, within 20 (twenty) days from the date of issue of the Ukrainian citizen passport to such person.

COMPLICATED PROCEDURE OF SOCIAL BENEFITS AND PENSIONS PAYMENT TO IDPs

In accordance with the requirements of Resolution No. 637 of the Cabinet of Ministers of Ukraine of November 5, 2014, On Social Benefit Payments to Internally Displaced Persons, allotment and continuation of payment of any types of social benefits and pensions to IDPs shall be performed at the place of registration of such persons, which shall be confirmed by certificate issued under the Procedure of Execution and Issuance of Certificate of IDP Registration, as approved by Resolution No. 509 of the Cabinet of Ministers of Ukraine of October 1, 2014. Payment of pensions and all types of social benefits and compensations allotted to the specified persons shall be made through State Savings Bank of Ukraine PJSC (Oschadbank).





In accordance with Resolution No. 509 of the Cabinet of Ministers of Ukraine of October 1, 2014, to be registered as an IDP, a person shall travel to the controlled territory and personally file an application to a structural division of the local state administration for social security of the citizens. Confirmation of displacement of such person from the uncontrolled territory shall be a note on registration of his/her place of residence in the passport. The IDP certificate shall be issued on the day of application. If the person has no passport note on permanent residence in the uncontrolled territory, he/she may provide other proof confirming his/her place of residence before enforced displacement; in such case the reference on IDP registration or a refusal to register an IDP shall be issued to the person within 15 days after the application. The IDP certificate term of validity shall be unlimited.

Before January 13, 2016, the Law on Provision for Rights and Freedoms of Internally Displaced Persons also contained a requirement regarding making a note in the IDP certificate on permanent place of residence in the controlled territory, such note to be made by

the authorities of the State Migration Service. On January 13, 2016, the new wording of the Law entered into force, and the above-mentioned requirement was excluded, so the Migration Service authorities stopped placing the respective stamp in passports starting from January 13, 2016. Nevertheless, the requirement on the presence of such stamp remained in Resolution No. 509 which stated that the reference would not be valid without such stamp. This is why all the agencies that pay any social benefits or pension could not make the specified payments if there was no respective note regarding place of residence in the IDP certificate. This led to termination of social payments and pensions to a great number of IDPs including those, who arrived to the controlled territory for the first time and those, who were forced to obtain a new reference due to objective reasons, for example, change of address or surname, child birth etc. The situation was settled only on June 11, 2016, when Resolution No. 509 was finally brought in line with the Law.

The situation got even more complicated after the government of Ukraine approved Resolution No. 365



of June 8, 2015, which not only equalled pensions and the procedure of its allotment and restoration to social benefits but also set a mandatory requirement regarding verification of actual places of residence for IDPs at the controlled territory by administrations of social security of the population, thus making them check the addresses specified in the reference before allotting any allowance, every six months.

Thus, to receive social security guaranteed by Article 46 of the Constitution of Ukraine, persons who reside in the territory uncontrolled by the Ukrainian authorities have to receive special status and also move to the controlled territory, reside there permanently and prove this fact by means of passing a respective verification procedure. It should be noted that no changes regarding a special procedure for allotment and reception of social benefits and pensions were made in the specific legislation (for instance, Laws of Ukraine On General Mandatory State Retirement Insurance, On State Aid to Families with Children, etc.).

Moreover, Resolution No. 365 does not stipulate automatic renewal of payments which have been

suspended. To renew payments, an IDP has to apply to the agency which suspended such payments and request renewal of payments and also pass verification procedure for the actual place of residence in the controlled territory.

It should be noted that, under requirements of Resolution No. 365, such verification has to take place within 15 days from the moment of application by an IDP or reception of a respective inquiry from another agency, and then a specially established commission for allotment (renewal) of social payments to IDPs shall consider the application to the agency of social security of the population on allotment (renewal) or refusal to allot (renew) respective social payments, accompanied by the certificate of inspection of material and domestic conditions of the given family composed after a respective verification.

However, in practice it takes about 1.5 to 2 months to hold such verification in settlements where a lot of IDPs live, considering the insufficient number of employees of the given social security agencies. Besides, in violation of Resolution No. 365, the employees of such social security agencies do not send any notification for the IDPs on the need to visit the structural department on matters of social security of the population for a procedure of physical identification, in case such person was not home during inspection (this practice is quite common in the cities Bakhmut, Kostiantynivka, Kramatorsk of Donetsk Oblast where a large number of IDPs live). Due to lack of budget, IDPs also do not get any registered letters with a request to appear before the administration.

Thus, many IDPs have no living sources within the specified period and are threatened with eviction as they have no money to pay for their housing rent. Besides, out of fear to miss the inspection visit, many IDPs simply do not leave their apartments even if they need to visit a doctor or relatives.

Nataliia, born in 1949, left the City of Horlivka and resides in Kramatorsk with her granddaughter Anastasiia, a medical university student. Anastasiia and her husband have a small daughter, so Nataliia helps young family to look after the child. Nataliia has not been receiving her pension since March 2016 due to the absence of the stamp of the State Migration Service confirming her place of residence in the IDP certificate. Anastasiia also failed to receive any social benefits because of the lack of the given stamp, while any childbirth benefits were denied to her because she

had given birth in the territory of the Russian Federation where she had fled with her family after the beginning of the armed conflict. After amendments had been made in Resolution No. 509, Nataliia finally received a new IDP certificate in August 2016 and applied to the Pension Fund's administration for renewal of her pension payments. However, the employees from the social security administration failed to visit Nataliia with an inspection for almost two months. The woman was getting desperate as her pension was the only source for living not only for her but also for Anastasiia's family, and all the petty savings of the family were gone within six months.

Vyacheslav who left the city of Donetsk and resides in Kramatorsk, turned 60 in April 2016, and acquired the right to pension payments. But the Pension Fund administration employees refused to accept the man's application on pension allotment due to the lack of the State Migration Service stamp in his IDP certificate. The man finally managed to file his application on pension allotment on July 4, but the pension was not allotted to him, not even in the middle of September, as the commission failed to visit him to perform verification of his actual place of residence.

Another essential violation of IDP rights is the need to receive all types of social benefits only through the branches of the State Savings Bank PJSC (Oschadbank). While all pensioners and other social benefit recipients can choose the way to receive their funds along with the institution to transfer their payments, IDPs are legislatively restricted in their freedom of choice as all their payments have to be received only through the State Savings Bank. In practice, this leads to gigantic queues at the bank branches and near ATMs which often run out of money several hours after they were filled. Moreover, despite the fact that Resolution No. 637 declared the option of home delivery of social payments, the respective procedure has not been developed yet and the bank does not perform respective functions, which deprives the IDPs who cannot move on their own of the chance to get their payments at home.

Another serious problem for non-mobile citizens is the need to receive a pension ID – a payment card

stipulated by Clause 4 of Resolution No. 637 and the Procedure of Issuance of Payment Cards Which are Pension IDs, as approved by Resolution No. 7-1 of the Board of the Pension Fund of Ukraine of April 8, 2016. In accordance with the specified normative acts, IDPs not only have to personally visit the Pension Fund administration to file an application on reception of a pension ID but also come to the bank to receive it, and then pass physical identification procedure in a banking institution once in six months (later – once per year).

The situation needs to be resolved by making amendments to legislation to ensure reception of payments by persons travelling from the uncontrolled territory or residing there permanently, without mandatory registration as an internally displaced person. An IDP certificate has to be mandatory only for allotment and payment of monthly target payment to internally displaced persons to cover their living expenses, including payment of their utility bills.

Development and approval of the respective procedure for social benefits payment to IDPs, for instance, similarly to the Procedure of Payment of Pensions and Social Services to Citizens of Ukraine Residing in the Territory of the Autonomous Republic of Crimea and the City of Sevastopol, as approved by Resolution No. 234 of the Cabinet of Ministers of Ukraine of July 2, 2014.

To cancel legislative requirements on verification of actual place of residence of IDPs in the territory controlled by the Ukrainian authorities for allotment or renewal of pension payments or any other types of social benefits. To introduce a direct provision in the legislation in accordance to which all payments that were suspended or denied due to the lack of the State Migration Service stamp in the IDP certificate shall be subject to mandatory renewal and payment to IDPs by application.

To cancel requirements of legislation regarding reception of social benefits and pensions by IDPs only through the State Savings Bank PJSC, as well as reception of a payment pension ID card by IDPs.

IDP Registration

IDP REGISTRATION BY PERSONAL APPLICATION ONLY

In accordance with Clause 2 of the Procedure of Execution and Issuance of Reference on IDP Registration (hereinafter referred to as the «Procedure», Resolution No. 509), as approved by Resolution No. 509 of the Cabinet of Ministers of Ukraine of October 1, 2014, to obtain an IDP reference, a person of age or a minor person shall apply to the structural department for social security of the population only personally.

This norm does not correspond to the norms of the Civil Code regarding representation, in particular, representation of minor children by their parents.

First of all, such requirements of the Procedure violate the rights of physically challenged citizens, who are forced to visit the administration in person regardless of their health condition and are also often forced to bear additional expenses, for instance, to call a taxi because they cannot get to the administration on their own to apply. Due to the specified requirements, minors are forced to visit the administration in person, and they often have to cut classes at schools and universities to do this. Also, persons who are away on business trips or for other purposes or those who cannot visit the administration in person during working hours to get a reference are practically deprived of their

right to receive their certificates in time.

To resolve this problem, amendments have to be made to the Procedure and provide minors and persons of age with the right to apply to the structural department of social security to obtain their IDP certificates in person or via a representative.

OBTAINING OF AN IDP CERTIFICATE BY MINORS

The edition of the Procedure effective since June 11, 2016, stipulates issuance of a separate IDP certificate for minor and juvenile children. As a child under the age of 14 (or under the age of 16 before October 1, 2016) has no passport, it is impossible to prove or confirm movement of such child from the territory uncontrolled by the Ukrainian authorities by means of producing a document with a note on registration of a place of residence in the territory of the administrative unit from which the child is internally displaced. At that, the Procedure does not contain any special norms to confirm the place of residence of a child in the uncontrolled territory.

In practice, local labour administrations demand a house register with a note on registration of the child in the residential premises located in the conflict area to issue a reference on IDP registration. It often happens



that a child was not registered in timely manner and not recorded in the house register, or when parents do not have the given document (it remained in the uncontrolled territory or was lost, etc.). Thus, the child is practically deprived of the right to be registered as an IDP.

Along with this, the Civil Code of Ukraine contains the norm which determines the place of residence of a minor person as the place of residence of his/her parents, foster parents, or one of them, guardians or the location of an educational or health care institution where such person resides.

Serhii, born in 1991, left Debaltseve with his wife and a little son for Bakhmut. Serhii received his IDP certificate, but, as his wife was registered in the city of Soledar of Bakhmut district which was controlled by the Ukrainian authorities, the local social security administration refused to issue an IDP certificate to Serhii's wife and son. The man also had a certificate of family status and a reference on their permanent residence in the city of Debaltseve dated 2014; using those documents, he applied to the administration to receive an IDP reference for his son, but the social security agency refused to issue the given reference to Serhii's son stating that the place of residence of the child in the uncontrolled territory had to be confirmed only by a house register, which Serhii had not taken with him when he left Debaltseve where active military operations were taking place.

The Procedure needs to be supplemented with norms which state that a minor child may obtain an IDP certificate in case his/her parents, foster parents or one of them, guardians lived in the territory from which the child was moved, or an educational or health care institutions where the child lived were located there.

CANCELLATION OF IDP CERTIFICATE IN CASE OF ABSENCE OF THE PERSON AT HIS/HER PLACE OF RESIDENCE FOR OVER 60 DAYS

Article 12 of the Law of Ukraine on Provision for Rights and Freedoms of Internally Displaced Persons stipulates that the IDP certificate shall be cancelled in case there is information about lengthy (over 60 days) absence of the person at his/her place of residence. Such absence shall be deemed the basis to believe that the internally displaced person returned to the abandoned place of permanent residence. Besides,

under the given Article, the IDP is bound to notify the social security agency where he/she is registered on the need to leave his/her place of residence for the term exceeding 60 days, but no more than 90 days, with specification of reasons for such absence.

The specified norm of Law is a serious violation of the freedom of movement guaranteed to everyone who stays legally in the territory of Ukraine, as well as Article 33 of the Constitution of Ukraine and the Law of Ukraine on Freedom of Movement and Free Choice of Residence.

Valentyna, born in 1945, and her husband left their permanent residence in the City of Horlivka to the City of Toretsk back in October 2014 and almost immediately received an IDP status. In spring 2016, the couple had to travel back to their apartment in Horlivka because neighbours had flooded it. The family was forced to stay in Horlivka for some time to repair their apartment. Besides, Valentyna's husband's health deteriorated, so, taking into account his age and lengthy procedure to be endured to cross the contact line, the couple decided not to go back to Toretsk, until the man got better. When they returned to Toretsk they found out that they no longer received pension payments due to cancellation of their IDP certificates, because they had been absent at their place of residence for over 60 days. At that, they have received no written notifications on deprivation of their status. Valentyna and her husband were desperate and angry because they had lost their only income for living, their pension that they had earned by working hard their entire lives. The only solution they could think of was to return to Horlivka where they at least had their own place to live.

To resolve this issue, it is necessary to exclude the norms regarding cancellation of IDP references in case of absence of the person at his/her place of residence for over 60 days and the obligation of such person to notify the social security agency on his/her absence from the Law of Ukraine on Provision for Rights and Freedoms of Internally Displaced Persons.

IMPOSSIBILITY TO OBTAIN THE IDP STATUS, IF A PERSON IS DISPLACED WITHIN THE SAME SETTLEMENT

Currently, the Law of Ukraine on Provision for Rights and Freedoms of Internally Displaced Persons and Resolution No. 509 do nothing to regulate the possibility to obtain an IDP certificate by the person,



who moved from one place to another within the same settlement due to objective reasons. Meanwhile, there are more and more such cases. Quite often, people have to move, when their houses are ruined or damaged as a result of armed conflict, or their houses are located in dangerous area, etc. People are forced to rent housing, make additional efforts to organize family life, and at the same time they have no special status or any additional support from the State. This is what the residents of a whole district in the city of Mariyinka had to face as Zeleny Hai Street is a strategic position occupied by the servicemen. This means the house owners have no access to their property and are forced to rent housing in other districts of the city.

Mykhailo's mother, born in 1963, an elderly woman, lived in the village of Shumy controlled by the Toretsk Municipal Council. During a mass shelling, the woman's house was completely destroyed. Mykhailo, residing in Toretsk, took his mother in. Practically, an elderly person lost everything she had, and the family had no funds to restore the destroyed house. Mykhailo's mother used to live in her own house in the countryside, so she is suffering because she has to live in the city and, moreover, she does not receive any additional assistance from the State.

It is necessary to make amendments to the Law of Ukraine on Provision for Rights and Freedoms of Internally Displaced Persons and to Resolution No. 509 that stipulate the option of registration of persons, who moved within the same settlement as IDPs, in case they provide documents confirming the need to move.

LACK OF ANY SPECIAL STATUS FOR PERSONS RESIDING ALONG THE CONTACT LINE

Despite the ongoing armed conflict and the danger for human life and health, many people still remain in the settlements near the demarcation line. Such settlements are often subjected to shelling, their residents have no access to basic services, such as education and medical aid, and also utility services due to damages of communication lines. In many cases, housing has been damaged as a result of shelling, land plots are turned into minefields or polluted with explosive remnants of war. As such people do not leave to move to safer regions, they cannot receive an IDP status. At the same time, legislation establishes no special status for such people affected by the armed conflict, and they have no additional guarantees or benefits.

It is necessary to adopt a normative act that gives special status to persons who reside along the contact line (for instance, at the demarcation line or in the 10-km area from the demarcation line, as defined by Resolution No. 252-VIII of the Verkhovna Rada of Ukraine of March 17, 2015) and provide such persons with additional guarantees (for instance, financial aid, free housing in safer regions, etc.).

NOTIFICATION ON PROCEEDINGS IN CASE INDIVIDUALS RESIDE IN THE TERRITORY UNCONTROLLED BY UKRAINIAN AUTHORITIES

The impossibility to notify an individual residing in the uncontrolled territory on proceedings in his/her case is a significant obstacle in providing access to justice. In accordance with the effective Civil Procedural Code of Ukraine, case proceedings without notifying the other party are impossible. If the Defendant's place of residence (stay) or location or work is unknown, he/she

will be summoned to court via notification in the printed media. The Defendant shall be deemed notified on the time and place of case proceedings from the moment of publication of such notification in the printed media. Currently, the only possible printed media outlet is Uriadovyi Kurier which is not publicly distributed; the price of posting a notification is about UAH 500. Also, a notification is published after court decision is made, so the date of printing of an issue does not always correspond to the date of the court proceedings.

This is also true for entry into force of court decisions made in similar circumstances.

The Civil Procedural Code of Ukraine has to stipulate notifications to defendant or other persons participating in the court proceedings whose place of residence is unknown or located in the uncontrolled territory, or the contact line, by means of publication of the court summons and the information on the court decision at the official web portal of the judicial authorities and not in the printed mass media.





FREE SECONDARY AID TO IDPs

The IDPs who are urged to file their cases to court are practically deprived of the opportunity to use legal aid even if their actual income exceeds the established subsistence level by UAH 1. Main legal recourse from IDPs concerns establishment of the legal fact of birth or death, appeal against decisions, actions or inactivity of the state authorities caused by the armed conflict. The person, who resorts to court based on the given reasons shall have the right to use free secondary legal aid in cases related to the armed conflict or such person's displacement.

Thus, there is a need to provide the IDPs with an option of getting free secondary legal aid in cases related to the armed conflict or such persons' displacement. The draft Law of Ukraine On Amendments to Several Legislative Acts of Ukraine Regarding Simplification of Access to Free Legal Aid and Increase of Quality of Such Services should serve as the basis, supplemented with the specified reasons for granting free secondary legal aid to IDPs.

EXEMPTION OF IDPs AND PERSONS AFFECTED BY ARMED CONFLICT FROM COURT FEES IN CONFLICT-RELATED OR DISPLACEMENT-RELATED CASES

Another serious obstacle for access to justice for IDPs or other persons affected by the armed

conflict is a court fee, which such person has to pay when resorting to court. For many IDPs and persons affected by the armed conflict, this is a substantial amount, therefore, they never go to court to protect their rights. For instance, the court fee to establish the fact of birth or death is UAH 251.20, while the fee for filing a lawsuit against the Administration for Labour and Social Security of the Population regarding illegality of refusal to appoint or cancel dedicated financial aid is UAH 551. In accordance with the effective legislation, the court has the right to defer, reduce or exempt the person from paying a court fee under a substantiated motion, but this requires substantial efforts from the person who has to obtain certificates on income which would prove his/her difficult financial status. Also, it should be noted that this is the right of a judge which he/she may implement in extraordinary cases. There is no possibility to appeal against the judge's decision on refusal to exempt the person from paying the court fee.

To resolve this problem, it is possible to make amendments to the Law of Ukraine On Court Fee by extending the circle of persons exempted from payment of court fees to include IDPs and other persons affected by the armed conflict (and residing at the demarcation line) in case they file applications to establish the legal fact of birth or death, receive an IDP status or a dedicated financial aid.

Recommendations

to the Verkhovna Rada of Ukraine,
the Cabinet of Ministers of Ukraine
and other executive agencies: //

1. To make amendments to the Law of Ukraine on Temporary Measures for the Period of the Anti-Terrorist Operation by means of adding the article on exemption from real estate tax located in settlements along the contact line, the list of which is established by the act of the Cabinet of Ministers of Ukraine.

2. To make amendments to the Law of Ukraine on Temporary Measures for the Period of the Anti-Terrorist Operation by adding the article on exempting natural persons and legal entities, including non-residents, who are owners of housing real estate, from taxes charged for renting or leasing real estate to IDPs.

3. To make amendments to the Tax Code of Ukraine as follows:

3.1. supplement the category of residential and non-residential real estate objects, which are not taxable (along with the objects of residential and non-residential real estate located in the alienation areas) with the objects located along the demarcation line the list of which is established by the act of the Cabinet of Ministers of Ukraine;

3.2. supplement the category of objects of residential and non-residential real estate which are not taxable and which were damaged or destroyed as a result of conflict.

4. To make amendments to the Tax Code of Ukraine as follows:

- supplement the article on exemption of individuals and legal entities, including non-residents, who are owners of residential real estate, from taxation of income from renting or leasing real estate to internally displaced persons.

5. To develop the Procedure of recording or inspection of destroyed or damaged housing objects. To approve the unified form of such inspection certificate in the Annex to such normative act.

6. To develop the mechanism of material damage assessment standardized at legislative level.

7. To bring Resolution No. 646 of the Cabinet of Ministers of Ukraine of September 22, 2016, in line with the Law of Ukraine on Provision for Rights and Freedoms of Internally Displaced Persons regarding information input in the Uniform Informational Database on IDPs, in particular, in the part of information on monetary amounts paid to them to provide for temporary settlement and reception of permanent housing.

8. To develop the Procedure for reimbursement of damages to individuals for destroyed (demolished) or damaged housing.

9. To develop the State Complex Program on Comprehensive Support and Social Adaptation of IDPs, which would stipulate short-term, medium-term and long-term governmental measures to ensure permanent housing, apportion land plots for building, building, reconstruction, restoration and re-equipment of municipal housing fund in the interests of IDPs.

10. To develop the State Program of measures regarding financial and investment support of individual housing building and purchase of housing for IDPs with consideration of available work places in the regions covered by such program.

11. To consider an alternative option of standardizing beneficial loans by means of making changes to the already existing state programs on support of certain categories of citizens for building (purchase) of housing, in particular, the following: the State Target Social and Economic Program for Building (Purchase) of Affordable Housing for 2010-2017; the State Program of Cost Reduction for Mortgage Loans to ensure affordable housing to citizens who require living conditions improvement; the State Program of Housing Provision for Youth for 2013-2017; Personal House Program.

12. To develop the mechanism of granting loans without any involvement from the State.

13. To develop the Standard Provision on registration and transfer of abandoned property and heritage into communal ownership in the territory of respective local community with consideration of the Law of Ukraine on Amendments to Several Legislative Acts of Ukraine Regarding Legal Status of Land Plots Whose Owners Died.

14. For the purposes of leasing of real estate objects soon to be included in the Register to internally displaced persons on beneficial terms, to make amendments to the Law of Ukraine on Provision for Rights and Freedoms of Internally Displaced Persons and other normative and legal acts that regulate the procedure of assignment of housing premises from the social housing fund (considering distribution and usage of available temporary housing by means of quoting).

15. To discuss the matter of propriety of forced confiscation of property by servicemen during the conflict with the representatives of the Ministry of Defense of Ukraine, military and civil administrations and local self-government agencies.

16. To develop the mechanisms of reimbursement of costs for confiscation of apartments and houses, utility services consumed by the servicemen in squatted housing; mechanisms of reimbursement for lost profits from lease of share lands.

17. To ensure the possibility of leaving the temporarily uncontrolled territory for persons, who lost their passport, by making amendments to the Temporary Procedure on Control over Movement of Persons, Transport Vehicles and Cargoes (Goods) across the contact line within Donetsk and Luhansk Oblasts, for instance, on the following:

- reception of permits to cross the contact line by producing a temporary ID of the citizen of Ukraine;
- departure from the temporarily uncontrolled territory by producing a temporary electronic ID of the citizen of Ukraine executed by the State Migration Service agencies by application and documents filed by the person in electronic form with respective security stages. To establish an electronic register of persons who received such temporary IDs;

- to execute a permit to cross contact lines by producing any documents containing a photo, full name of the person or individual tax payer number;

- to cross the contact line by decision of the chief of coordination centre on the condition of producing any ID containing a photo, full name and other data about the holder, or a copy of such document, or to confirm one's identity by testimony of witnesses, when crossing the line at a security checkpoint or a blockhouse;

- to ensure presence of the State Migration Service representatives at security checkpoints to perform the procedure of identification and passport issuance for such person directly at security checkpoints.

18. To improve the Register of Permits for movement of persons within the conflict area by means of:

- establishing a separate electronic register for persons, who lost their passports;

- ensuring technical possibility to obtain a permit to cross the contact line on production of a temporary ID of the citizen of Ukraine or other documents containing a photo and full name of the person.

19. To develop a normative act that would authorize the Security Service of Ukraine or the State Frontier Service of Ukraine to accompany persons, who lost their passport in the temporarily uncontrolled territory with the purpose of issuance of a new passport, to introduce respective norms to the legislation regarding such decisive state authority.

20. To develop amendments to the effective legislation with the purposes of authorizing international humanitarian organizations to represent persons, who lost their passports in the temporarily uncontrolled territory to issue new passports for them without a power of attorney certified by a notary.

21. To make amendments to the Law of Ukraine on Freedom of Movement and Free Choice of Residence in Ukraine and the Rules of Registration of Place of Residence, as approved by Resolution No. 207 of the Cabinet of Ministers of Ukraine of March 2, 2016, which would authorize the local self-government agencies

(including military and civil administrations of Donetsk and Luhansk which fulfil authorities of respective regional councils) to register permanent place of residence of persons in the territory temporarily uncontrolled by Ukrainian authorities.

22. To make amendments to the Law of Ukraine on Provision for Rights and Freedoms of Internally Displaced Persons and the Procedure of execution and issuance of certificates on IDP registration, as approved by Resolution No. 509 of the Cabinet of Ministers of Ukraine of October 1, 2014, regarding:

- ensuring registration of IDPs and reception of respective certificates by application from the duly authorized representative of an IDP;
- confirmation of the fact of displacement of the child without a passport by using information on registered place of residence in the territory from which internal displacement takes place, provided by the child's parents, foster parents or one of them, guardian etc.;
- granting an IDP status to the person internally displaced within one territorial unit on condition of provision of respective documents confirming objective reasons for such displacement (for instance,

documents confirming destruction of housing, lack of access to housing, danger for life and health etc.);

- exclusion of norms regarding cancellation of an IDP reference in case the person is absent from his/her place of residence for over 60 days.

23. To develop a complex state social program to ensure social benefits and pensions to IDPs and persons permanently residing in the temporarily uncontrolled territory.

24. To make amendments to the effective legislation with the purpose of abolishing the norms regarding registration of a person as an IDP and opening an account in the State Savings Bank PJSC as mandatory conditions to receive social benefits and pensions.

25. To make amendments to the effective legislation with the purpose of providing pensions under the Laws of Ukraine on Pension Provision and on Mandatory State Pension Insurance in the Pension Fund of Ukraine agencies displaced from the temporarily uncontrolled territory, or main territorial agencies of the Pension Fund in the regions based on the territorial principle (by registered place of permanent residence), on condition of opening an account at any bank institution.

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