

# Legislative Update

UNHCR update on displacement-related legislation | March 2018

## Adopted Legislation

- One-time cash assistance to persons illegally deprived of their liberty in non-government controlled areas (NGCA)
- State budget allocation for pilot measures addressing challenges caused by internal displacement
- Action plan for the implementation of public policy on Crimea

## Other important developments

- The Supreme court recognizes “armed aggression” of the Russian Federation as the reason for internal displacement

## Draft Legislation

- Liability for violation of rules of entry to and exit from the “ATO” zone
- Issue of ID documents confirming Ukrainian citizenship for NGCA residents (amendments to the law on temporary measures for the “ATO” period)
- Legal status and social guarantees of persons illegally deprived of their liberty, hostages, or convicted in the “temporarily occupied territories of Ukraine” and elsewhere
- Action plan on the implementation of the Government’s IDP Integration and Durable Solutions Strategy
- Order on enrolment to secondary schools

## Adopted legislation

### One-time cash assistance to persons illegally deprived of their liberty

On 16 March, the Cabinet of Ministers of Ukraine (CMU) amended its previous resolution on some issues regarding social support to persons released from imprisonment in the non-government controlled areas of the Donetsk and Luhansk regions of 31 January 2018.<sup>1</sup> These provisions concern persons released in the course of exchange of prisoners between Ukraine and de facto authorities in the NGCA. The Government identified the Ministry for Temporary Occupied Territories and IDPs (MinTOT) as the responsible ministry for the payment of one-time cash assistance to persons illegally deprived of their liberty in the NGCA and released on 27 December 2017 and on 24 January 2018. Such assistance amounts to UAH 100,000 (USD 3,800) per person and is expected to be payable from the special budgetary programme.<sup>2</sup>

### State financing for pilot measures addressing challenges caused by internal displacement and the return of combatants<sup>3</sup>

On 28 March, the CMU adopted, through Resolution no. 221, an order entrusting MinTOT to use special state budget funds to implement pilot measures addressing the challenges caused by internal displacement and the return of

<sup>1</sup> The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-postanovi-kabinetu-ministriv-ukrayini-vid-31-sichnya-2018-r-38>

<sup>2</sup> In accordance with the special budgetary programme “Measures on the protection and ensuring of rights and interests of persons deprived of their liberty as a result of actions of illegal armed groups and/or state bodies of the Russian Federation on the separate sites of Donetsk and Luhansk regions, where state bodies temporarily do not exercise their functions and the temporarily occupied territory of Ukraine, as well as the support of the abovementioned persons and their family members”, the available program budget for 2018 is UAH 96,714,400 (USD 3,704,161).

<sup>3</sup> The word “combatant” is used in the quoted regulation and does not reflect UNHCR’s position on this.

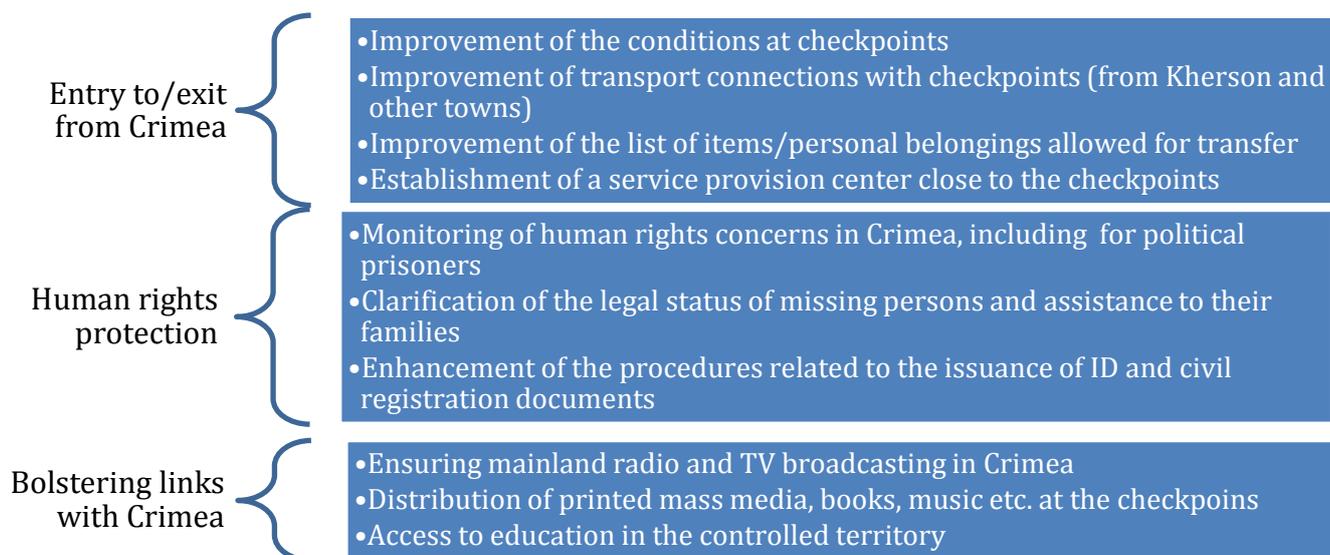
combatants.<sup>4</sup> The pilot project is co-financed by the International Bank for Reconstruction and Development (IBRD).<sup>5</sup> The state budget is expected to cover the sub-components related to:

- improvement of housing infrastructure
- extension of job search possibilities
- extension of municipal services including those related to health care, social and psychosocial support
- measures on supporting local communities

The Ministry for TOT and IDPs is expected to participate in the selection of projects initiated by local authorities, and to manage the necessary procurement of goods and services. All procurement will be in accordance with national tendering procedures. After completion of a tender and identification of a supplier, MinTOT will cover all expenditures on behalf of the selected projects, while provision of goods and services will be delivered directly to communities. There are no geographical restrictions, and projects may be implemented anywhere in Ukraine, except the NGCA and Crimea.

### Action plan on the implementation of some elements of public policy towards Crimea

On 28 March, the Government adopted an action plan aimed at the implementation of some elements of public policy regarding the “temporarily occupied territory” of the Autonomous Republic of Crimea and the city of Sevastopol.<sup>6</sup> The draft action plan was presented a year ago,<sup>7</sup> but its adoption was delayed. The action plan consists of fifteen tasks briefly outlined below:



The action plan contains a number of interesting and useful activities, which may contribute to the strengthening of links with Crimea and its residents. It provides incentives for accessing education in government-controlled areas and does not have a specified duration. Some activities are expected to be implemented during 2018, while others are marked as “regular”. It is expected, that responsible authorities shall report to MinTOT on a quarterly basis, while the Ministry will present reports on the implementation of the action plan on annual basis.

<sup>4</sup> The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-poryadku-vikoristannya-koshtiv-peredbacheni-uderzhavnomu-byudzheti-dlya-realizaciyi-pilotnih-zahodiv-z-reaguvannya-na-problemi-dlya-rozvitku-vikliani-peremishennyam-osib-ta-povernennyam-kombatantiv>

<sup>5</sup> Within the framework of the letter of understanding on the provision of grant funds between the Ministry of Economic Development and International Bank of Reconstruction and Development of 20 September 2016 № TF0A3307 (Project “Overcoming aftermaths of the conflict, pilot project on restoration and capacity building”).

<sup>6</sup> The full text of Decree 218-r available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-planu->

<sup>7</sup> Information is available in Ukrainian: <http://mtot.gov.ua/v-ministerstvi-prezentuvany-plan-zahodiv-shhodo-deokupatsiyi-krymu/>

## Draft legislation

### Imposition of liability for violation of rules of entry to and exit from the “ATO” zone

On 27 February, Parliament adopted amendments to existing legislation related to ensuring the security of the state borders.<sup>8</sup> Draft law no. 5442 contains many different provisions that increase the level of responsibility for breaching rules of entry to and stay in Ukraine for foreigners and stateless individuals, as well as for breaching the prohibition to enter the territory of Ukraine. However, the introduction of article 204-4 to the Code of Administrative Violations has a major impact on UNHCR's persons of concern as it introduces new violations for crossing the line of contact outside official entry-exit checkpoints or without proper documents, and for crossing the state border through the non-government controlled checkpoints on the border with Russia. The State Border Guard Service (SBGS) could issue on-the-spot fines of UAH 510-850 (USD 19-32) to a person violating the rules.<sup>9</sup> Since all cross-border movements and crossings of the line of contact are recorded in the same database, the SBGS can identify whether an individual entered or exited the NGCA through an official checkpoint. For many NGCA residents, travelling to the government-controlled area via the Russian Federation is easier due to accessibility of the route and the possibility to travel either by public or private transport. Previously, where the SBGS identified travel to and from the NGCA via Russia, they would transfer the case to court. In most cases, judges did not consider that this would amount to violation of the crossing rules due to *force majeure* (armed conflict and inaccessibility of other routes) or due to the expiration of the statute limitations. Now, the SBGS will issue fines upon the identification of a case of such a transit movement. This may have a negative impact on individuals, including IDPs, NGCA residents, or any other individual traveling to or from the NGCA.

### Draft Law on amendments to the Law on temporary measures for the ATO period

On 4 April, Parliament adopted in the first reading draft law no. 4023a amending the law on temporary measures for the “ATO” period related to identity documents confirming Ukrainian citizenship.<sup>10</sup> In accordance with its provisions, the State Migration Service (SMS) will issue identity documents confirming the Ukrainian citizenship to NGCA residents in Donetsk or Luhansk regions, whereas IDPs can apply for identity documents in any region of Ukraine. To record the data on the place of the residence registration in an identity document, the SMS may use information from the State Registry of Voters. This shall equal NGCA residents with residents of Crimea, who can refer to the information in the State Registry of Voters when re-confirming the registration of their place of residence in national identity documents. This shall prevent situations where individuals lack registration in their identity documents due to the impossibility to provide documentary evidence. This shall also make it easier to prove the residence registration for minors who receive their identity for the first time (based on the residence registration of their parents).

### Draft law on the legal status and social guarantees of persons illegally deprived of their liberty, hostages or convicted in the temporarily occupied territories of Ukraine and outside their limits

On 27 March, a group of Members of Parliament registered the draft law no. 8205 on the legal status of and social guarantees for persons illegally deprived of their liberty, hostages or convicted in the temporarily occupied territories of Ukraine and beyond its limits.<sup>11</sup>

<sup>8</sup> The President signed the law on 25 April 2018, but it was not promulgated at the time of distribution of this report. The full text of draft law no. 5442 is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=60570](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60570)

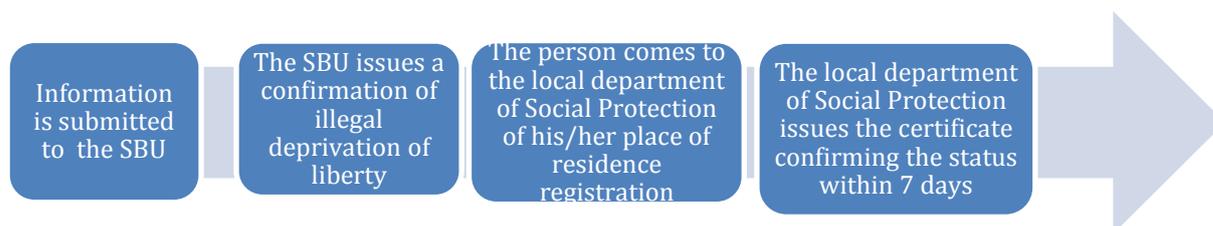
<sup>9</sup> The amount is calculated in accordance with the rate of non-taxable living wage for 2018

<sup>10</sup> The full text available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=59794](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59794)

<sup>11</sup> The full text available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=63748](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63748)

This draft law reflects the major provisions of three previously registered draft laws<sup>12</sup> on similar topics. By virtue of its decision of 15 March 2018,<sup>13</sup> the Parliamentary Human Rights Committee recommended to decline them and to develop a consolidated draft. Draft law no. 8205 includes provisions on:

- Regulating the legal relations arising from several statuses: (1) a person illegally deprived of their liberty in the NGCA or illegally convicted beyond their limits; (2) “hostages” as defined in the Criminal Code of Ukraine captured by “illegal armed groups” or law enforcement bodies of another state after 20 February 2014; (3) citizens of Ukraine illegally convicted by courts of another state;
- The necessary steps for obtaining the status and the potentially related benefits are the following, with an important role being played by the State Security Service (SBU):



The draft contains several unclear areas:

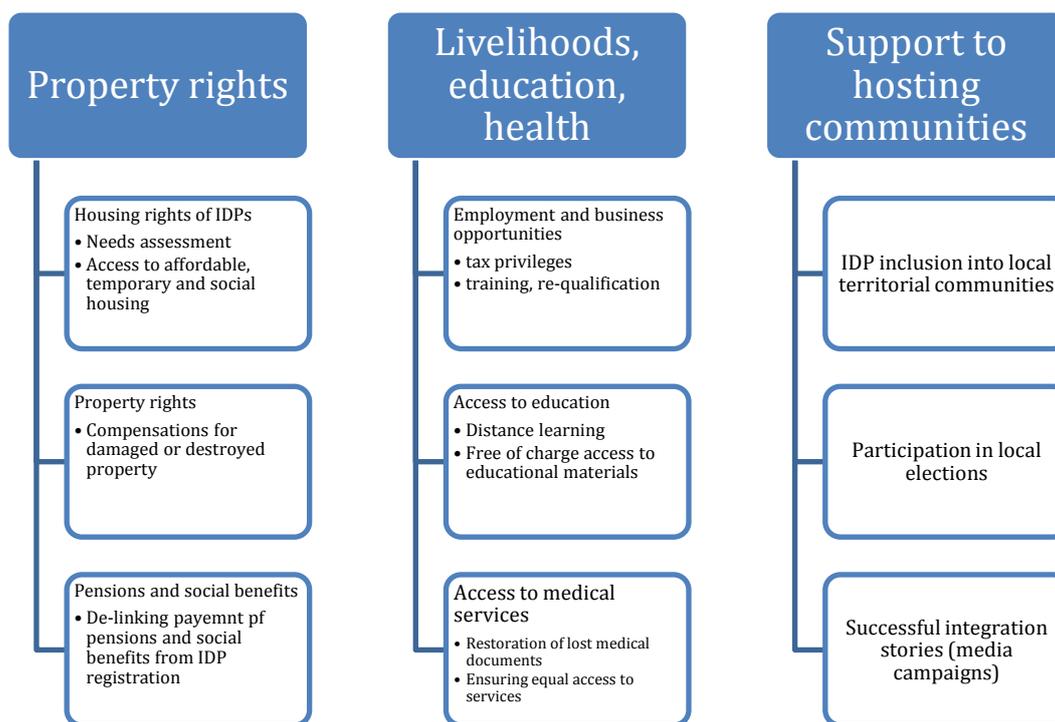
- How the SBU decides whether or not to grant a certificate confirming the circumstances of deprivation of liberty, which may lead to an abuse of power;
- The link to the place of residence registration bears a potential risk for individuals registered in Crimea or NGCA.

#### [Draft action plan on the implementation of the IDP Integration and Durable Solutions Strategy](#)

MinTOT released for the public consultations a draft of the action plan on the implementation of the IDP Integration and Durable Solutions Strategy. According to the Strategy, the draft action plan is built around three strategic priorities and seven sub-topics; it contains 21 tasks and 84 actions, briefly outlined below.

<sup>12</sup> The full texts available online (in Ukrainian): (1) Draft law no. 6700 dd.13 July 2017 on recognizing the persons deprived of their liberty due to political reasons by decisions of the Russian Federation state bodies as the political prisoners as well as the conditions and the order of providing them with the state social assistance and benefits: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62256](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62256), (2) Draft law no. 7452 dd. 26 December 2017 on the legal status and social benefits of persons illegally deprived of liberty by illegal armed formations, law enforcement bodies of the foreign state or illegally convicted [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=63236](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63236), (3) Draft Law 8006 dd. 06 February 2018 on the grounds of legal and social protection of hostages, other persons illegally deprived of their liberty [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=63420](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63420)

<sup>13</sup> The full text available online (in Ukrainian): <http://kompravlud.rada.gov.ua/documents/zasid/73854.html>



This action plan has the potential to assist IDPs in finding an end to their displacement. The draft contains several important measures, such as those on de-linking the payment of pensions from the registration as an IDP, expanding access to affordable housing and establishing a compensation mechanism for damaged or destroyed housing. The document and its implementation would benefit from: (i) including civil society – IDPs themselves – into the review and evaluation process, notably through provision of regular feedback on unmet needs; (ii) ensuring steps towards ending displacement by reviewing the current policy of granting all IDPs with certain benefits. Instead, provision of benefits shall be needs-based; (iii) providing clear and achievable targets that could assist in measuring the progress towards the implementation of the action plan. UNHCR shall continue monitoring the process of elaboration of the action plan and its next implementation and stands ready to provide further expertise in this regard.

#### Order on enrolment to secondary schools

With a view of effectively implementing the Law on Education,<sup>14</sup> the Ministry of Education issued a draft order on enrolment to elementary and secondary school for the public discussion.<sup>15</sup> UNHCR provided its comments and suggestions in order to ensure that its persons of concern would not face difficulties. In particular, the draft order envisages a priority enrolment to elementary and secondary schools for children residing in its “area of service”. However, individuals have to provide a proof of their legal stay and residence in that area, by presenting either their residence registration document or other evidence (such as a notarized rental agreement or other forms of property documents). The IDP certificates and asylum certificates were missing in the list, but were introduced based on UNHCR’s recommendations. Unfortunately, the rights of children who possess no documents were not taken into account, which might discriminate against Roma children who may face difficulties in presenting the requested evidence. To that end, the Ministry of Education suggests involving services of care and guardianship authorities, which could issue acts confirming the factual residence upon request.

<sup>14</sup> The new law was adopted in September 2017. The full text available online (in Ukrainian): <http://zakon2.rada.gov.ua/laws/show/2145-19>

<sup>15</sup> The text of the draft order is available online (in Ukrainian): <https://mon.gov.ua/ua/news/mon-proponuye-dlya-gromadskogo-obgovorennya-proekt-poryadku-zarahuvannya-vidrahuvannya-ta-perevedennya-uchniv-do-derzhavnih-ta-komunalnih-zakladiv-osviti-dlya-zdobuttya-povnoyi-zagalnoyi-serednoyi-osviti>

## Other Important Developments

### [The Supreme Court recognizes the “armed aggression” of the Russian Federation as the reason for internal displacement](#)

On 14 March, the Supreme Court of Ukraine established the fact that forced displacement in July 2014 of the applicants in a case from the “occupied part of the Luhansk region” occurred as a result of the “armed aggression” of the Russian Federation against Ukraine and the occupation of the part of the Luhansk region by the Russian Federation.<sup>16</sup> Both the first instance court and the court of appeal rejected the application indicating that the establishment of such reasons for internal displacement and its further clarification into a legal fact do not fall under the competence of the court of general jurisdiction. However, the Supreme Court decided to establish a clear link between the “widely known and accepted fact of the Russian aggression” and the forced displacement. The applicants plan to use the judgement in order to bring a compensation claim against the Russian Federation (for moral and material damages).

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<sup>16</sup> The full text available online (in Ukrainian): <http://reyestr.court.gov.ua/Review/72850452>