

THE RIGHT TO FREEDOM OF MOVEMENT: POSITIVE DEVELOPMENTS YET NEW CONCERNS



On 16 June revisions were enacted to the Temporary Order (TO) of 21 January 2015 which put in place an access regime to/from the territory not controlled by the Government of Ukraine. On 7 July a web-portal was launched easing the process of obtaining the required permits which one must apply for in advance to cross the contact line.

These are positive developments, however concerns remain; persons still have to apply for permits and ultimately the Government should discontinue the system and allow the population of Ukraine to move freely. In addition, new protection concerns are arising.

A wide-ranging number of national and international protection actors stand behind this note and the following recommendations:

1. Should the system not be discontinued, it is recommended that the Ukrainian Government at a minimum (i) further review the implementation of the permit system and whether its impact on the civilian population is proportionate to the security aims pursued and (ii) adjust the current system to abide by national and international law.
2. A new legislative act should define the entity legally accountable at the national level as well as for the implementation at the contact line, not leaving decisions to be made by individual soldiers.
3. The Government is commended for putting in place an online portal allowing people to apply/receive passes faster and by an easier process. It is recommended that the Government invest resources to make these positive developments sustainable, including by assisting those who cannot access internet. Information regarding check-point opening and closure hours is not available from official sources and people rely on social media. This should be a government provided service.
4. It is imperative that the Government find a way to deal with the long lines at the check-points ensuring that people are not placed at risk in areas at risk of shelling or mines for longer than absolutely necessary. Procedures and a system should be put in place enabling vulnerable individuals (older persons, disabled, children etc) and those in need of emergency medical treatment to cross the line in an expedited manner. This must be done in a way not placing vulnerable individuals at risk e.g. by being used by others (ride in vehicle etc.) to cross faster.
5. The Government should uphold the rights of people to access their social entitlements. Planned logistical centres are intended to allow population in the areas not controlled by the Government to use banking system and purchase medication and food while traveling shorter distances. While this can be seen as a positive step in allowing people access to their own accounts and life-saving medication which is not allowed to enter the area of their residence, the protection risks are grave. The Government must find mitigating measures to avoid placing civilians at risk.
6. Ukrainian authorities are commended for their initiative where the SBU and civil society are working together on the TO's practical implications and need for adjustments. It is recommended that this existing ad-hoc working group be formalized detailing its official role. Thorough consultations with civil society and international organizations should take place during review of any procedures related to Freedom of Movement ensuring that new procedures are practical, useful, and uphold international humanitarian and human rights standards.

KEY PROTECTION CONCERNS

- The existing permit system, in impeding the movement of civilians, is contrary to the Constitution of Ukraine stating that the freedom of movement may be limited by the law only.
- It is not in line with international human rights law to impede movement of civilians out of an area which may be heavily and indiscriminately shelled.
- The TO directly affects civilians attempting to flee in search of safety and civilians wishing to leave the conflict area. Although the revised order allows security concerns as a reason to cross even without sufficient documentation, this depends on the individual soldier at the checkpoint and is not institutionalized within a structure with accountability.
- It is a concern that the procedure for challenging a decision of not having been granted a travel permit can only be done through the lengthy process of the court system and a person can be left without a chance to move for a long time
- The lines along the contact line have grown exponentially with at times hundreds of vehicles and individuals and civilians having to sleep by the check-points overnight. This exposes people to a high level of risk as checkpoints are frequently a target of shelling.
- There are cases of civilians who in order to by-pass the permit system end up maimed/killed by mines/UXOs when avoiding checkpoints.

7. The TO allows a child to cross the contact line from the GCA to the NGCA if they have a notarized power of attorney issued by both parents, however obtaining such a document is practically not possible if one of the parents live in the NGCA. It is recommended that the TO is further amended with the advice of child protection actors ensuring do no harm and that the best interest of the child is upheld. It is important to note that humanitarian evacuations should ensure that family unity is kept intact with children to the greatest extent not being separated from their guardians.
8. The revised TO foresees the possibility to cross the contact line without a permit in case life is jeopardized (7.13). However, due to certain aspects of Ukrainian legislation the implementation is practically impossible as there are no criteria regarding the circumstances when the mentioned provision can be enforced. Security and emergency related passing of the contact line without permits should be formalized and not left to the discretion of the person in charge at individual check-points. Updated procedures should be communicated in writing as an official order to all actors including military units, check-points and local authorities to ensure implementation.
9. There is currently no service to move persons from the checkpoints to places further west, nor is there a service to move through the “no-mans” land between the GCA and the NGCA check-points which in some locations is as long a distance as 20 km. This is a protection concern for vulnerable individuals such as older persons, pregnant, sick and children and should be addressed.
10. Access to the areas controlled by the Government should be eased for people from Luhansk.

KEY PROTECTION CONCERNS

- There are grave protection concerns related to the logistical centres/markets the Government of Ukraine plans to establish very near the checkpoints. This may become a pull factor for people to stay near checkpoints at high risk of shelling. Should an incident take place people may also panic and run into nearby areas not cleared of unexposed ordnances or mines.
- On 13 August the head of the civil-military administration of Luhansk region stated that the construction sites of the prospective logistic centres in Luhansk region have been actively shelled over the last days.
- The restrictions on freedom of movement inhibit people from accessing (i) social entitlements and (ii) healthcare. The TO further effectively isolates people in non-government-controlled areas from the other areas of Ukraine; hinders dialogue and reconciliation. Due to destroyed roads and limited (3) number of checkpoints (transport corridors) the residents of Luhansk region controlled by armed groups have even further difficulties to reach Government-controlled areas and can only do so via Donetsk region increasing protection risks and 2-3 hour additional travel time each direction.
- There is currently no service to transport persons from the checkpoints to places further west, nor is there a service to move through the “no-mans” land between the GCA and the NGCA check-points which in some locations is as long a distance as 20 km. This is a protection concern for vulnerable individuals such as older persons, pregnant, sick and children. Public transport should be arranged and permitted.

