

UPDATE ON IDP REGISTRATION

Following discussions on IDP registrations in various fora including a Protection Cluster round table, the purpose of this note is to provide an update on the current situation as of August 2015 and set out some key recommendations. This note focuses on practices observed in Government Controlled parts of Ukraine.

BACKGROUND

- The law on ensuring the rights and freedoms of internally displaced persons (IDP Law) was adopted on 20 October 2014. The law extends a specific set of rights to internally displaced persons – providing protection against discrimination, forcible return and assistance in any voluntary returns. The law also simplifies access to different social and economic services, including social and unemployment benefits and residence registration, required for accessing banking services and registering a business. Article 4 of the IDP law details the procedure to be followed for registration.
- Ukrainian legislation governing legal status of IDPs comprise of the IDP Law and Resolutions no. 505 On monthly financial aid for accommodation and utilities and 509 On registration of IDPs adopted by the Cabinet of Ministers of Ukraine on 1 October 2014.
- According to Ukrainian legislation, internally displaced persons can exercise their rights and freedoms, specifically, access to medical services, education, any kind of state social assistance, pensions, humanitarian aid, financial services etc. only upon their registration as IDPs.
- In December 2014 the Ukraine State Emergency Service (SES) paper-based methodology for IDP registrations transited to a Ukraine Ministry of Social Policy (MoSP)-managed electronic system which more rapidly tracks and aggregates the numbers. The MoSP uses a formal registration procedure, through local welfare offices, regional offices that aggregate formal submissions and check the data at the regional level, and a central registry office that aggregates IDP registration data at national level. The switch to MoSP led to identification of some 400,000 more IDPs. Electronic registration is seen as a useful tool.
- As of 7 August 2015, the structural units of social protection of regional and city administrations have registered 1,428,077 IDPs from Donbass and Crimea. (59% elderly, 24% persons of working age, 13% children, 4% persons with disabilities). 52% of IDPs are registered in the government-controlled area (GCA) of Donetsk and Luhansk Regions, 13% in Kharkiv, 7% in Kyiv, 7% in Zaporizhzhia and 5 % in Dnipropetrovsk. This number does not include individuals displaced within the Non-Government Controlled Areas (NGCA), as well as those IDPs whose registration was cancelled or those unable or unwilling to register as IDPs, yet displaced.
- Unaccompanied or separated IDP children who travel to Government-controlled territory with family members other than their legal guardians cannot register as IDPs. Cabinet of Minister Resolution 509 sets out that children can be registered only with a legal guardian. As a result, unaccompanied or separated displaced children have no access to assistance. To establish legal guardianship and gain access to IDP registration, the caretakers of the children are required to present a document written by the parents or a legal guardian, which needs to be legally certified by a notary. Notary offices are mostly closed in the areas currently not under control of the Government, which makes it almost impossible to obtain such document notarized.

POSITIVE DEVELOPMENTS

The draft law #2166¹ on “Amendments to Certain Legislative Acts of Ukraine to strengthen the guarantees of the rights and freedoms of internally displaced persons” brings a number of improvements related to registration issues:

- a. The IDP definition is extended to include stateless individuals and foreigners who are entitled to permanent residence in Ukraine.
- b. IDP registration procedure is simplified: a) more registration sites are planned; b) reduced documentary proof for IDP registration (no rigid requirement for residence registration in place of origin); c) delegates practical implementation aspects (application procedure and form, data management, etc.) to higher executive bodies – Cabinet of Ministers and MoSP;
- c. The registration/stamping of actual address of residence at the State Migration Service is to be canceled.
- d. Introduction of indefinite term of IDP certificate instead of six months;
- e. Provides clearer review/appeal mechanism for denied registrations.

Additionally, a draft Cabinet of Minister resolution introducing amendments to Resolutions #505 and #509 provides a list of persons (guardians and family members) that can register a child as an IDP therefore broadening the list of persons with whom the child can be registered with, as well as it allows child protection authorities to initiate registration of a child as an IDP when not accompanied by parents or a legal guardian².

¹ The draft was adopted by Parliament in its first reading on 19 May 2015. The date for the next hearing is not yet known.

² This draft resolution is pending adoption until draft law #2166 is adopted and comes into force. Then, this draft will have to be harmonized with the new law.

This would constitute an important improvement in terms of access to assistance for unaccompanied children without a legal guardian or representative who have been unable to register as IDPs.

The problem of registration of unaccompanied children is also considered in the draft law #2254 comprehensively amending legislation related to child rights, and inter alia addressing the registration of children affected by displacement³. Thereby local administrations assume the responsibility to arrange registration of IDP children not accompanied by legal guardians via childcare and guardianship authorities.

SOME CHALLENGES REMAIN

Despite the welcome improvements of the draft law, some concerns remain regarding the registration system:

- Some categories of IDPs are facing difficulties to register: those who lack documents (i.e. those whose documents were lost or destroyed⁴ or confiscated or never obtained them), those who see a risk associated to registration (i.e. those who see a risk to be drafted), certain groups with limited mobility (i.e. disabled, elderly), as they need to register in person;
- IDPs coming from areas not listed by the Government in the territorial definition of ATO zone in Council of Minister Order No. 1085 cannot register as IDPs; in particular, the update to the Order No.428-p from 05 May 2015 does not include villages and towns of Luhansk region that have been affected by the conflict but are in the areas controlled by the Government and are located in the so-called “grey areas” near the contact line.
- Linking social benefits and pensions to IDP registration can cause unnecessary displacement, registration queues and inaccuracy of IDP statistics and might confuse targeting for humanitarian response, for instance by targeting persons based on their registration status rather than based on their vulnerability or needs.
- If humanitarian aid eligibility is entirely contingent on registration, that may lead to bureaucratic delays in its distribution to displaced populations with urgent humanitarian needs because they have to await official recognition as IDPs.
- Available data on the registered IDP population lacks age and gender disaggregation and therefore doesn't provide a full picture of the profile of this population and its specific needs.
- Local authorities, responsible for IDP registration, prefer to apply provisions of bylaws instead of the Law on ensuring the rights and freedoms of the IDPs. Bylaws, being more specific, can also be more restrictive and less generous than the law and can also contradict the letter of the Law.
- Following adoption by the Parliament of the Law No.2831-3 “On local election”, there are concerns about the participation of IDPs in local elections. A person will only be able to vote in his or her place of residency registration. In the case of IDPs this means that they will not be able to participate in the elections in their place of displacement unless they have residency registration stamp in their passport. According to Principle 22 of the Guiding Principles on Internal Displacement, IDPs have the “right to vote and to participate in government and public affairs, including the right to have access to the means necessary to exercise this right”.

RECOMMENDATIONS

- The Government of Ukraine should establish information and counseling centers for IDPs at district level to inform about rights and entitlements. Regional and local authorities can use media outlets to disseminate information regarding IDP rights and entitlements. Provide free-of-charge access points for registration-related inquiries as well as free-of-charge phone lines to be called by prospective IDPs that cannot access centres in the GCA.
- The Government should develop alternative procedures for registration of IDPs unable to register due to physical or legal limitations (for instance on line registration system, home visits by social worker to facilitate registration, etc).
- Donors should support the government's registration capacity with funding or through additional staffing to make the registration processes smoother and faster.
- Displaced persons remain citizens or habitual residents of Ukraine, and are entitled to protection and assistance on that basis alone. Registration may be necessary for the delivery of benefits, but Ukraine must avoid creating a new “second class” legal category of citizens, with lessor access to universal rights.
- Humanitarian aid providers to consider establishing procedures for provision of assistance to IDPs without state registration as an IDP, when it takes too long time to register.
- Bylaws which regulate registration issues should be amended in accordance with the Law on ensuring rights and freedoms of internally displaced persons. In general procedures could be clarified and multiple legislative layers avoided.
- Advocacy with the government (MoSP) on the establishment of and fund allocation for a comprehensive all-Ukrainian and all-institution wide online system. This system would enable to identify the exact IDP numbers, segregate by age, gender etc.; learn whether they are getting social payments or if they have accommodation, etc. This system would also help to coordinate the humanitarian assistance as it would show the aid (type, how many times, by who) received by every beneficiary.

³ The draft was adopted by Parliament in its first reading on 14 July, with final scrutiny pending next parliamentary session.

⁴ They will have to apply for restoring documentation before registering as an IDP.