

LEGISLATIVE UPDATE

UNHCR update on legislative changes affecting displaced persons | Nov - Dec 2017

This update describes legislative and policy developments during November-December 2017. Developments covered include the government Internally Displaced Persons (IDP) Integration and Durable Solutions Strategy and the recently adopted procedure for the birth registration for children born in non-government controlled areas (NGCA). The section on draft legislation included details of recently registered projects on collaborationism, which, if adopted, may heavily impact residents of NGCA and the Autonomous Republic of Crimea.

Adopted Legislation

- Pension and medical reforms
- IDP Integration and Durable Solutions Strategy
- Birth registration

Draft Legislation

- Draft laws on countering collaborationism



Nikolai, 80, worked as an engineer at a plant in Hranitne village, Donetsk region, until he retired. He has diabetes, losing his legs because of the disease. Hranitne is located near the line of contact and its residents are exposed to frequent shelling that caused damaged many homes. Nikolai and his wife remain in the village because they do not have anyone to stay with in safer areas of Ukraine. Access to medical care is difficult for those living in areas near the line of contact. Many cannot afford to travel to hospitals and clinics, largely relying on humanitarian aid. Photo: UNHCR Ukraine/Nikita Yurenev

Adopted legislation

Birth registration

On 6 December 2017, the Government adopted amendments to the currently existing procedures on documentation of non-clinical birth.¹ The document aims to ensure the issuance of medical certificates proving the delivery of a child in the NGCA. The document distinguishes two procedures:

- 1) Mothers who can travel to the GCA shall take the following steps to obtain a medical certificate:
 - Submit a package of medical documents proving her pregnancy and the delivery (if approved by an authorized international humanitarian organization) to a specially formed medical commission;
 - The medical commission will conduct a medical examination of the mother and the baby at a medical facility in the GCA;
 - Upon completion of the medical examination, a medical certificate with the delivery date (estimated if necessary) shall be issued.
- 2) For mothers unable to travel to the GCA, the document states that a team of three volunteer doctors would travel to the NGCA in order to conduct medical examinations and, if needed, collect genetic materials to ensure the family link between the mother and the baby. The collection of the genetic materials may also be conducted by an authorized international humanitarian organization. A medical certificate may be issued upon completion of the medical examination or based on the results of the genetic tests.

Medical and genetic methods for recognizing births are generally complementary to an administrative procedure. It is not yet clear under which circumstances the authorities foresee utilizing the procedure. The following points about this procedure are noted:

- The procedure described in the document leads to the issuance of a Ukrainian medical certificate of birth, not a birth certificate issued by the civil registry.
- The role of the registration authorities is not detailed. While it seems that mothers who travel to GCA could approach the civil registry with the medical certificate, it is not clear how parents would receive a birth certificate if they are unable to travel to the GCA;
- The document does not spell out who would bear the costs related to the possible travel of volunteer medical teams to the NGCA (including their insurance, allowances and travel costs), or to the medical tests (including the genetic tests).

IDP Integration and Durable Solutions Strategy²

On 15 November, the Government adopted the “Strategy of Integration of Internally Displaced Persons and Implementation of Long-Term Solutions to Internal Displacement until 2020”. The

¹ The text of the Decree 1004 of 6 December 2017 amending the existing order is available online (in Ukrainian):
<https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-poryadku-pidtvordzhennya-faktu-narodzhennya-ditini-poza-zakladom-ohoroni-zdorovya>

² The Strategy was published on the Governmental portal on 13 December. The full text is available online (in Ukrainian):
<http://www.kmu.gov.ua/control/uk/cardnpd?docid=250501348>

Strategy outlines several problems faced by IDPs, including lack of livelihoods and housing solutions, difficulties in protecting their rights, restoring documents, as well as the impossibility of full-scale participation in public life (such as participation in local elections). The Strategy emphasizes the principles of human rights of IDPs, the rule of law, transparency and inclusiveness. It also calls for the establishment of quantifiable indicators that would allow measurement of the progress and achievement of the stated goals. The Strategy underlines that internal displacement is not a status and the search for durable solutions is a government priority. The Strategy identifies three priority intervention areas:

Priority One

Ensuring access to and protection of **property rights**

- Prioritizing IDPs in accessing housing solutions, flexible rent taxation policies, and the provision of legal advice relating to rental of housing;
- Introducing an independent and transparent procedure for the proof, documentation, and verification of housing, land and other property;
- Damage assessment and for the restoration of violated property rights;

Priority Two

Overcoming barriers for IDPs to access **livelihoods**, and their right to **education** and **medical services**

- Improvement of local state employment services; creation of new jobs; elaboration of procedures to renew lost documents proving previous work experience, and tax privileges to companies employing IDPs;
- *Equal access to education* through distance learning, reduction in tuition fees and fees for student housing;
- Equal access for IDPs to health care facilitates; facilitating renewal of *documents* certifying a specific medical condition; facilitated access to psychological health and psychosocial care.

Priority Three

Support to host **communities during IDP integration**

- Building social cohesion and strengthening the capacity of host communities;
- Local programmes and plans that take IDPs into account;
- Monitoring and assessing the level of integration of IDPs;
- Providing state budgetary support to the local budget of host communities;
- Increasing cross-sectoral interaction (healthcare, psychological and social support, protection of public order, legal aid), and enhance the capacity and coordination of the response to gender-based and other forms of violence;
- Include IDPs in the registries of local communities thus allowing them to participate in local public affairs and guaranteeing their right to vote in local elections;
- Building a system of psychological, social and mediation support to hosting communities and IDPs;
- Supporting businesses of IDP that positively influence the local economy.

If implemented, these measures would improve the quality of life of IDPs through enhancement of their capacities, stimulate economic activities and access to more affordable and sustainable housing.

Some issues received less elaboration in the Strategy. The Strategy focuses on integration as a durable solution, while it barely mentions the right to return. The Strategy does not address non-discrimination, identification and civil documents, or the payment of pensions to residents

of non-government controlled areas (many of whom currently register as IDPs in order to receive pensions), freedom of movement, and the protection of persons with specific needs.

In developing the **action plan** to accompany the Strategy, it will be important to establish clear and measurable indicators allowing the measurement of implementation progress. The action plan could also build on greater linkages with other strategies already adopted by the Government, such as the State Migration Policy Strategy adopted in 2017, and the National Human Rights Protection Strategy.

Pension and medical reforms

The Government of Ukraine and Parliament amended legislation related to pensions and the healthcare systems that, although they affect all Ukrainian citizens, they have the following effect on the situation of UNHCR's persons of concern:

- Asylum seekers are no longer eligible for free of charge access to medical services as a result of changes in healthcare. Previously, emergency care was available free of charge. Currently, asylum seekers must pay fees as other foreigners for medical assistance and services.
- Amendments relating to pensions includes a provision requiring the Cabinet of Ministers to prepare and submit a draft law concerning how pensioners residing in the NGCA will receive their pensions for Parliament's consideration within six months after the law enters into force (by 3 April 2018).³ The new legislation could address the issue of de-linking IDP registration and pensions. UNHCR will follow progress on this closely.

Draft legislation

Draft laws on countering collaborationism

In December, a number of legal acts related to countering collaborationism were registered in Parliament. All the drafts appear in the context of intense public discussions regarding transitional justice in Ukraine. These include:

- The draft law no. 7425 on the protection of Ukrainian statehood from collaborationism.⁴ The draft law defines "collaborationism" very broadly, and calls for the application of various legal measures against persons who supported actions violating Ukraine's territorial integrity. The draft suggests the establishment of a special commission that would ban the most active supporters of de facto authorities from political and public life. The elements of political responsibility include prohibition to uptake any important posts in state authorities for a period of up to fifteen years.
- An alternative draft law, 7425-1, aims to ensure justice, and the punishment of individuals responsible, for crimes committed in the territory of the Donetsk and Luhansk regions during the period when those regions were not under Government control.⁵ It concentrates on the most serious breaches of international humanitarian law such as war crimes.

³ See The full text is available online (in Ukrainian): <http://zakon0.rada.gov.ua/laws/show/2148-19/page4>.

⁴ The full text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63192

⁵ The full text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63278

- The draft law no. 7426, registered together with the draft law no. 7425, introduces additional articles to the Criminal Code of Ukraine in order to apply criminal responsibility for collaborationism in the highest ranks of the de facto authorities.⁶
- The draft law no. 7354 introduces criminal responsibility for public denial of “Russian aggression” against Ukraine.⁷ The draft interprets “public denial” very broadly and could be applied arbitrarily.

Work towards possible normative frameworks of the future reconciliation efforts is needed. Broad public discussion involving all social strata at the stage of elaboration is essential. Any reconciliation efforts need to take into account the interests and needs of different groups of the population in order to reflect a true consensus. It is also important that such legislation include safeguards preventing discrimination of the population residing in the NGCA.

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⁶ The full text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63193

⁷ The full text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63059