

## **UN call for submissions: Thematic report on racial and ethnic based discrimination through nationality and citizenship exclusion**

### **Submission by the UNHCR Representation in Ukraine**

#### ***Background information***

The UNHCR Representation in Ukraine is implementing its activities in such fields as protection of refugees and asylum seekers, stateless persons, internally displaced persons, and returnees. UNHCR observes that Ukraine, being a State Party to a number of the UN treaties on human rights has made a significant contribution to ensuring the rights of people in need of international protection such as those seeking asylum, and during few recent years of the armed conflict in the Eastern Ukraine – concerning the IDPs as well. However, having acceded to the 1954 and 1961 UN Statelessness Conventions in 2013, the domestic legislation governing issues on statelessness has not been adopted yet, influencing negatively stateless persons and those at risk of statelessness residing in the territory of the country.

Furthermore, UNHCR Ukraine and its partner NGOs note some instances of discrimination and barriers to naturalization towards the mentioned persons of their concern, who have a specific migratory status. Information on these challenges, connected to race, colour, language, national or ethnic origin, xenophobia and other related intolerance, is provided below.

#### ***I. Refugees and asylum-seekers***

In Ukraine, the domestic legislation presents two forms of international protection which can be granted by the asylum authorities, i.e. refugee status and complementary protection. Since establishment of the Governmental refugee status determination (RSD) procedure in 2000s, some challenges remain, *inter alia*, the low official recognition rate<sup>1</sup> and absence of effective interpretation. The last one relates to difficulties in access of the asylum seekers to interpretation services both at the stage of their refugee claim consideration by the asylum authorities and, if rejected, by the courts.

Migration detention at the border also involves difficulties in ensuring the foreigners' right to be explained about detention procedures in a language they understand. Moreover, the current domestic legislation does not foresee the effective remedies in appealing against a ban on entry to the territory of Ukraine. The available options of appealing are i. a submission to the senior management of the respective border guards detachment, which proved to be not effective remedy, and ii. approaching a court, which is practically not accessible due to requirements to pay a court fee, knowledge of the contact information or a relevant court and its bank details, frame the appeal in a form required by the law, pay delivery fee etc. while being factually

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<sup>1</sup> Statistics on drops in the recognition rate can be found in the overview on refugees and asylum seekers dated August 2017, available at <http://unhcr.org.ua/attachments/article/317/2017%2008%20UNHCR%20UKRAINE%20Refugees%20and%20asylum%20seekers%20update%20FINAL%20EN.pdf>

detained in a transit zone of, for instance, an international airport and without access to a free legal aid.

In 2017, the Government introduced a medical reform which entailed deprivation of the asylum seekers of their right to urgent medical care at public medical institutions, which UNHCR considers to be unacceptable policy. Such deprivation, combined with other difficulties in accessing public services, i.e. absence of social housing, creates additional constraints to the local integration of persons seeking asylum in Ukraine. The other issue is that the asylum seekers, after applying to the asylum authorities, have to deposit their national passports therein for the period of their asylum application consideration, and the passports are not given back even if the asylum seeker wishes to perform such actions as, for instance, marriage registration or entrepreneurship registration. This entails serious violations of the human rights and fundamental freedoms contrary to Ukraine's obligations on the UN and CoE human rights treaties.

Contrary to the recognized refugees, the complementary protection holders are deprived of the right for naturalization as such right is not envisaged in the *Refugee Law* and the *Law of Ukraine on Citizenship of Ukraine*<sup>2</sup>. Even a legal marriage with a Ukrainian citizen, birth of children in the territory of Ukraine doesn't guarantee the regularization of complementary protection holders. In order to apply for temporary residence permit as a first step to naturalization, they have to refuse their complementary protection. After that, they have to leave the territory of Ukraine, obtain the visa D in a Ukrainian consular unit abroad and afterward return to Ukraine. Only this gives the opportunity to be allowed into the immigration procedure with the aim of family reunion. UNHCR is concerned that such practice of the Ukrainian migration authorities, which allow the complementary protection holders and asylum seekers into the immigration procedure with the purpose of obtaining citizenship only after their rejection of international protection in Ukraine, creates serious protection risks to the mentioned persons.

Racism and xenophobia also hinder the integration of refugees and asylum seekers. From 2007 until 2017 UNHCR, jointly with a network of governmental, inter- and non-governmental agencies, was closely monitoring the issues of discrimination and hate crimes. UNHCR through its partners was registering information on hate incidents identified towards its registered persons of concern. Statistics of the few recent years shows that refugees and asylum seekers became victims of the hate attacks because of their race, color of skin, language, religion and ethnic origin. In 2017, 4 hate incidents were reported by the asylum seekers all of whom are of African origin, while 5 such incidents were identified in 2016 also regarding the persons of African origin and one Iranian. Usually hate incidents remain underreported as the victims do not believe in effectiveness of investigation and, sometimes, even are worried about their safety from the side of perpetrators, if submitting an appeal to the police.

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<sup>2</sup> No. 2235-III dated 18 January 2001, available in Ukrainian at <http://zakon2.rada.gov.ua/laws/show/2235-14>

To commemorate the World Refugee Day, in September 2017 UNHCR together with the Embassy of Canada in Ukraine and “The Right to Protection” Charitable Foundation organized a photo exhibition. It was presented in few cities, starting from Kyiv. While being exhibited in Lviv, the photo stands were vandalized, and UNHCR considers that to be a hate crime directed against refugees because of their nationality or race. However, the hatred element was not taken into account neither by the police while investigating, nor by the court while delivering a decision about a minor administrative offence. UNHCR approached the National Police with a request to consider a hate crime element, but they responded that there were no grounds for re-consideration of the case as hatred was not qualified during investigation. Then the UNHCR Representation in Ukraine and the Embassy of Canada in Ukraine jointly addressed the Ministry of Interior and the Ministry of Justice, drawing attention to the fact that the hate incidents are not investigated in Ukraine properly. Though the Ministry of Interior’s reply did not lead to re-consideration of the case, they assured that the concerns on hate crime were well-noted and the National Police departments were instructed to take into consideration such element during investigation in the future. This incident illustrates impunity of the perpetrators which leads towards existence of xenophobia in the society.

“The Right to Protection”, UNHCR’s partner NGO, reported about some instances of racial discrimination with regards to the expulsion and deportation of non-citizens based on racial profiling. Particularly, such cases were identified within the regular operation called «Migrant», implemented by such governmental bodies as the State Migration Service of Ukraine, State Border Guard Service of Ukraine and National Police of Ukraine. In 2017, the operation was conducted twice. Following the official statistics, in 2017 the operation facilitated the identification of 5515 irregular migrants, decisions on forcible expulsion of 5073 individuals were made, 211 individuals were deported, 152 placed to special migrants’ detention facilities<sup>3</sup>. The main target of the operation, as announced, is the prevention of crimes committed by foreigners, and identification of foreign nationals at risk of committing crimes on the territory of Ukraine. However, the mechanism of actions by the state institutions involved doesn’t correspond to the overall goal of the operation. Individuals were being detained on the streets by police patrols, based on their appearance differences; afterwards, those people were transferred to the police departments and held there for hours (up to 72 hours) awaiting identification. During the operation many asylum seekers, refugees and complementary protection holders, foreign students etc., holding and possessing official documents proving their legal stay in Ukraine, were detained for a prolonged period. “The Right to Protection” mentioned that the police patrols were poorly informed on identification documents of the asylum seekers and persons granted international protection in Ukraine. In the course of such detention, the persons concerned were deprived of their legal rights to free legal aid, interpretation services, and even medical care and the right to know about the reasons of detention. After protection intervention and release, some of the persons detained claimed about their fear to complain about the mentioned violations as they don’t believe in a fair justice because of intolerance experienced from the government agencies during detention.

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<sup>3</sup> Public Report of the Head of the State Migration Service of Ukraine for 2017, available in Ukrainian at <https://dmsu.gov.ua/news/publichnij-zvit-golovi-derzhavnoj-migracijnoj-sluzhbi-ukrajni.html>

### **Recommendations to the Government of Ukraine:**

- 1) Ensure effective access to asylum, including at the border;
- 2) Ensure access to effective interpretation during the Governmental refugee status determination procedure and in migration detention;
- 3) Amend domestic legislation and national practice in order to establish effective appeal mechanism against ban to entry the territory of the Country;
- 4) Ensure the asylum seekers' access to the urgent medical care, by amending the current legislation;
- 5) Ensure the asylum seekers' access to enjoyment of the human rights and fundamental freedoms, by providing them with an opportunity to use their national passports to register the civil acts concerning marital status, entrepreneurship and others;
- 6) Ensure that the complementary protection holders and asylum seekers have the right to apply and be granted with citizenship, by amending the domestic legislation;
- 7) Ensure effective investigation on hate crimes;
- 8) Provide trainings and increase awareness about asylum procedure and international protection statuses among the National Police staff, in order to prevent human rights violations in the course of the migration policy operations.

### ***II. Statelessness***

The main protection issue regarding stateless persons and those at risk of statelessness is that, since accession to the 1954 and 1961 UN Conventions on statelessness in 2013, the statelessness determination procedure has not been adopted by Ukraine yet.

Currently, a draft law on foreigners and stateless persons is pending consideration by the Parliament. Though this draft gives some basic structure of the statelessness determination procedure, the definition of a stateless person still requires to be harmonized with that of the *1954 Convention*. Few other questionable points in terms of their correspondence to the international standards of human rights are that the draft law excludes those persons who can be considered as a threat to the health and legitimate interests of the nation, and prohibits recognized refugees from applying for immigration permits.

Birth registration also remains a challenge as the law requires paying a court fee in order to establish the birth of a child who was born in the non-government controlled areas (NGCA). This creates additional financial burden on the most socially vulnerable persons.

Those children, who are born in Ukraine to the undocumented asylum-seeking parents, are at risk of statelessness. This relates to the gaps in the domestic legislation which does not recognize the asylum seeker's ID as a proper identity document.

At present, the stateless persons and those at risk of statelessness are not covered by the free legal aid by the law. Even if they apply to the free legal aid centres, there are certain obstacles in their access to such aid, *inter alia*, necessity to confirm their low income, provide some identity documents etc.

On 30 December 2017, the CoM Resolution No. 1004 dated 6 December 2017 *On amendments to the Procedure for confirming the fact of birth of a child outside of the institution of health care* came into power. The amendments introduced an administrative procedures for issuance of medical certificate at GCA for a child born at NGCA. It envisages: i. the women and the child examination to a health facility in GCA; and ii. if the examination was not done, conduct of the research *on genetic affinity between the woman and the child* by the State Specialized Institution; 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. This procedure is likely to be cumbersome and not easier than the accelerated judicial procedure for families who can travel to GCA. For families who can't travel to GCA, it's not clear whether/how this procedure would work. The Commission' conclusion on confirmation of the fact of the birth of a child and the medical certificate of birth shall be issued in duplicate and shall be the basis for state registration of birth of a child in the State Civil Registry bodies. UNHCR is concerned that the role of the registration authorities is not detailed, and that the document does not spell out who would bear the costs related to the possible travels of volunteer medical teams to the NGCA (including their safety insurance, DSA and travel costs), or to the medical tests (including the genetic tests) etc. UNHCR partner NGOs operating in the Zakarpattya and Odesa regions reported that Roma minority frequently faces discrimination and social prejudices on a daily basis.

According to unofficial statistics, provided by NEEKA NGO, 79 Roma communities with about 80,000 people reside in Zakarpattya region. Those Roma settlements are located in 13 districts. The most of Roma are not documented and do not hold any identification documents. The predominant part of the Roma population does not have an official place of registration and they usually live in self-built houses in the camps. Illiteracy, poor knowledge of the Ukrainian language, unawareness on their rights, and absence of opportunities to be employed all results in their socioeconomic isolation.

“The Desyate Kvitnya,” Odesa partner NGO, reported that more than 40% of stateless persons or those at the risk of statelessness, identified in Odesa region, are Roma. The most of them informed about discrimination in the past, when they tried to approach the governmental bodies by themselves. The human rights activists informed “The Desyate Kvitnya” about cases when Roma even tried to hide their ethnicity to avoid discrimination. Current Ukrainian legislation links the right to nationality with the fact of the permanent legal residence in the territory of Ukraine as of 1991, which have to be proved by the registration of the place of residence. As Roma usually live without registration or even personal documents because of cultural specifics, they are mostly not covered by the mentioned law; thus, they are factually deprived of their right to the Ukrainian citizenship.

The Ukrainian legislation contains barriers for registration of birth of children, whose parents live in Ukraine without legal grounds and/or personal documents. In practice, this become a serious obstacle for children in applying for citizenship. The child services are responsible for registration of birth of such children. However, there were identified instances of negligence by

the child services towards registration of birth of the children from minorities, especially, Roma children.

The domestic law exempts from payment of an administrative or court fees in documentation procedures for a particular social groups (disabled persons, persons with low income etc.). However, the facts, which grant right for such exceptions have to be proved by relevant documents, which is often unavailable for stateless persons or persons at the risk of statelessness, including homeless persons. In addition, there are situations when the local authorities refuse in providing services to marginalized social groups, even despite of direct prescriptions of laws.

As of 31 December 2017, 5,294 stateless persons are legally residing in Ukraine, including 4,425 persons permanently; while 5,363 stateless persons were legally residing, including 4,904 permanently in December 2016. UNHCR estimates the number of stateless persons and persons at risk of statelessness to be closer to 35,000.

In June-December 2017, UNHCR assisted a total of 436 stateless persons or persons at risk of statelessness.

### **Recommendations to the Government of Ukraine:**

- 1) Harmonize the definition of a stateless person with the *1954 Convention*;
- 2) Introduce a statelessness determination procedure to allow for identification and protection of stateless persons;
- 3) Provide the stateless applicants with free legal aid;
- 4) Reduce the residence period required for recognized stateless persons to apply for naturalization from 8 years to 3 years;
- 5) Abolish court fees for establishing the legal facts of birth and death of individuals from NGCAs and Crimea;
- 6) Harmonize legislation relating to birth registration, in line with international standards to ensure further simplification of birth registration of children born in non-government controlled areas and Crimea, and of children of undocumented asylum-seekers; and
- 7) Amend Article 7 of the *Law of Ukraine On Citizenship of Ukraine* to bring it in line with the *1961 Convention* and to remove the requirement that the parents of a child born stateless must have legal residence for the child to be granted Ukrainian nationality.

### ***III. Internally displaced persons***

As of January 2018 about 1,492,100 persons<sup>4</sup> have registered as internally displaced, the majority of them living in regions bordering conflict-affected areas and in Kyiv city.

In 2017, UNHCR published its Participatory Assessment<sup>5</sup>, covering the persons of concern, including the IDPs. In this publication, some manifestations of discrimination towards the IDPs, mainly in the areas of access to the housing, employment, and social benefits are reflected.

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<sup>4</sup> Statistics of the Ministry of Social Policy of Ukraine, as of January 2018, available at <http://www.msp.gov.ua/news/14636.html>

<sup>5</sup> <http://unhcr.org.ua/attachments/article/1526/2017%2006%20UNHCR%20UKRAINE%20Participatory%20Assessment%20FINAL%20EN.pdf>

To have the right to social entitlements, the IDPs are required to undergo verifications every six months. In case of failure, re-confirmation of their displacement shall be conducted through social protection institutions, but quite often ends up in courts, which creates additional burden in terms of court fees and time resources on these vulnerable persons.

During the participatory assessment focus groups were conducted with IDPs and persons at risk of displacement in order to identify major problems they face. In total, 123 focus group discussions took place, with participants grouped by age, gender, diversity and vulnerability criteria, including persons with disabilities, serious medical conditions, single mothers, orphans, LGBTI, and those living in collective centres. The majority of participants originated from the Donbas, with a small number from Crimea.

March 2018 will mark the first displacement cases registered with regard to individuals fleeing Crimea. Vast waves of displacement from Donetsk and Luhansk regions took place from April 2014 to February 2015. Over four years Ukrainian government has elaborated a large normative framework regulating registration as an IDP, access to pensions and social benefits for registered IDPs, certain acts related to integration of IDPs at new locations, laws and by-laws related to rights and privileges of conflict affected population and residents of occupied and/or not-controlled parts of the territory. However, there are signs of discrimination of some categories of IDPs as listed below:

- *IDP registration* (as per Cabinet of Ministers (CoM) *Resolution 509* of October 2014) requires provision of certain documents which may be inaccessible to some individuals (such as Roma people who quite often lack identification documents or children born at the NGCA and not provided with Ukrainian birth certificates). Moreover, amendments to other by-laws resulted in the dependency of IDP registration from other factors such as the CoM decree which lists settlements situated at the NGCA or along the line of contact;
- *Access to pensions and social benefits* for individuals originating from Donetsk and Luhansk regions is conditioned with IDP registration, as per CoM Resolutions No. 637 and No. 595. On the one hand, this incentivizes individuals to displacement. On the other hand, this led to a situation where individuals who permanently reside at the NGCA are forced to register as IDPs in order to access the only source of money, their pensions. This leads to distorted statistics regarding internal displacement, circular verifications of “registered IDPs” who cross the line of contact through relevant data bases, as well as home visits to verify “registered IDPs” presence at the controlled part of the territory. In February 2016, the Ministry of Social Policy issued regulations suspending social payments to 150,000 beneficiaries, pending verification of their residence.<sup>6</sup> CoM *Resolution 365*, adopted on 8 June 2016, regulates the reinstatement of IDPs’ social benefits. However, it also provides for residence checks by joint teams of social service and law enforcement agencies, with the authority to de-register individuals found not to

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<sup>6</sup> OCHA, Humanitarian Bulletin: Ukraine Issue, February 2016, available at <http://reliefweb.int/report/ukraine/humanitarian-bulletin-ukraine-issue-07-1-29-february-2016>.

be immediately living at their place of residence during those ‘spot-checks’ foreseen under the resolution.<sup>7</sup> This burdensome provision results in large workload on local social protection departments and local pension fund departments. All these measures resulted in the situation where by December 2017 over 500 thousand pensioners residents of NGCA do not have access to pensions. Many of them turn to courts for reinstatement and receive positive judicial decisions.

- Large numbers of persons living in NGCA are also internally displaced, however, accurate statistics on the scope of the displacement are not currently available. This is in part due to restrictions on movement imposed by de facto authorities. IDPs in the NGCA have reported a variety of protection concerns, including general insecurity due to shelling, fear of armed groups who operate in their region, shortages of water, electricity, and heating, limited access to health services and education, and lack of livelihood opportunities. The suspension of support payments to persons in the NGCAs of the Donetsk and Luhansk regions has also contributed to displacement.
- *Freedom of movement and transfer of personal belongings* between GCA and NGCA is still undermined on certain accounts. In particular, the system of electronic passes introduced by the Temporary Order on movement persons, vehicles and goods along the contact line in Donetsk and Luhansk regions in 2015 remains difficult for elderly people, who do not have a grasp of computer technology. This results in them forgetting their passwords or not knowing them at all since they accessed e-passes system through intermediaries. This is a great challenge since e-passes are valid for one year only. Amendments introduced in May 2017 were expected to ensure indefinite validity of such passes, but technical problems hindered implementation of this provision as of January 2018. Additionally, due to checkpoints being bottle necks on the line of contact, crossing them takes *long hours*, people await in queues quite often in harsh weather conditions. Another concern is related to the transfer of goods across the line of contact: as per CoM Decree No. 99 and the Ministry of TOT Order No. 39 both adopted in March 2017 there was identified a list of allowed items to be transferred across the line of contact. This resulted in a large number of cases where simple things, including wheelchairs or home appliances were not allowed to be transferred due to their absence in the list.
- Another problem related to crossing of the line of contact is *conditions at checkpoints*, which are due to the absence of a single authority responsible for their maintenance leave much to be desired. In particular, *access to basic services* at checkpoints (such as medical care, water and sanitation) is restricted. Elderly, pregnant women, travelers with children and persons with disabilities experience the biggest hardships. This is especially true for

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<sup>7</sup> This matter was in particular highlighted by the Special Rapporteur on the human rights of internally displaced persons during his September 2016 visit. See e.g. OHCHR Press Release, *Ukraine: UN expert calls for comprehensive strategy to address IDPs' plight as winter closes in*, 9 September 2016, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20472&LangID=E>.



the only checkpoint in Luhansk region where people have to cross through the half destroyed bridge. Monitoring has also revealed that persons have attempted to circumvent the checkpoints by crossing through irregular routes. This exposes them to landmines and explosive remnants of war, and there have been reports of people being injured or killed while trying to cross the contact line irregularly.

Persons with specific vulnerabilities have reported challenges in meeting basic needs. Attention is brought, in particular, to the situation of persons with limited mobility and other disabilities, female-headed households, elderly persons, particularly those with no family members or host community to support them, and children. Gaps in the legal framework also present challenges, including in relation to school registration and obtaining birth certificates. Since February 2016 residents of NGCA and Crimea can receive Ukrainian birth and death certificates through specially established court procedure. Although by January 2018 over twenty thousand individuals have received birth certificates through this process, it remains difficult due to a number of reasons: cost (travel to and stay at the controlled territory; court fees) and time (in the best case scenario, two days of travel and two days of procedure, while in average it takes two weeks to obtain a birth certificate).

It should also be noted that although IDPs are eligible to vote in national elections, their participation in local elections is impossible. *Law No. 1706-VII* adopted in June 2015, requires that they establish permanent residence in the oblast in which they are based.

Since displacement is now protracted, it is of outmost importance that the government strengthens its integration and durable solutions policies. However, there are hindrances to IDPs integration. In particular, those IDP pensioners who change their registration of the place of residence to the one at the controlled territory (which in most cases is possible after procurement of housing) refute their IDP registration. However, they are forced to re-register as IDPs or the payment of pension would be suspended.

### **Recommendations:**

UNHCR recommends that the Government of Ukraine:

- 1) Revise all relevant national laws and by-laws to guarantee effective implementation of the law *On Ensuring the Rights and Freedoms of Internally Displaced Persons*;
- 2) identify a single authority responsible for maintenance of checkpoints and for provision of basic services there;
- 3) Amend the by-laws in order to reverse the logic pertinent to the rules of transfer of goods and personal belongings across the line of contact (from the list of allowed items to the list of forbidden items);
- 4) Ensure that humanitarian organizations receive unhindered access to all affected populations (in particular, adopt draft laws 4360 and 4361 on humanitarian assistance in emergency situations);
- 5) Establish non-discriminatory mechanisms for registration, access to health, freedom of movement, and other issues specific to IDPs, in line with international standards;

- 6) Streamline procedures for the payment of social benefits to IDPs, including de-linking the payment of pensions from registration as an IDP;
- 7) Ensure proper integration and durable solutions mechanisms for all IDPs; and
- 8) Amend national legislation to ensure that IDPs are able to effectively exercise their right to vote in local elections.

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