
Inputs for consideration in the formulation of the draft guidelines on the effective implementation of the right to participate in public affairs

NGO “Civil holding “GROUP OF INFLUENCE”¹ expresses deep concern and would like to draw OHCHR's attention to the limited access of internally displaced persons (IDPs) and other mobile citizens to elections, decision-making and participation in public affairs in places of factual residence. The NGO expresses its regret that Ukrainian authorities continue to ignore certain international standards of protection rights of conflict-affected population. NGO “Civil holding “GROUP OF INFLUENCE” is grateful to Human Rights Council and High Commissioner for Human Rights for transparent and inclusive preparation of these draft guidelines.

Overview and background information

Due to the Russian aggression against Ukraine, which started in 2014, Ukrainian citizens living in annexed Crimea and certain areas of the Donetsk and Luhansk regions have been forced or obliged to leave their homes. As of February 2018, according to official data of the Ministry of Social Policy of Ukraine, there are 1 493 057 internally displaced persons (IDPs) in Ukraine².

Elements of Ukraine’s electoral law (in particular, Laws of Ukraine "On Parliamentary Elections" and "On Local Elections") exclude IDPs from participating in electing Members of Parliament in single-member districts, mayors and members of the village, settlement and city councils. During the last four years, there has been no equal participation in political and public affairs for persons who became IDPs as a result of the war.

The Parliamentary Assembly of the Council of Europe believes that the adoption of a comprehensive strategy for internally displaced persons (IDPs), ensuring their political and social rights as well as their integration, should be one of the Ukrainian Government’s priority tasks³.

Description of the issue

More attention should be paid to allowing equal access to voting in national and local elections for IDPs, as about 4% of the Ukrainian electorate, who are internally displaced, are deprived of the full exercise of their political rights. In Ukraine, people can participate in local democracy only in places of their residence registration which are often different from the actual ones.

¹ NGO “Civil holding “GROUP OF INFLUENCE” being established in 2016 by team of NGO Donetsk Committee of Voters of Ukraine that had 20 years of experience and was forced to move from Donetsk after the Russian aggression started. Experts of “GROUP OF INFLUENCE” are the member of working group on the residence registration process improvement at the Ministry of Interior Affairs; coordinates a subgroup of the Interagency Working Group on Improving National Legislation on the Protection of IDPs Human Rights in the Ministry of temporarily occupied territories and IDPs in Ukraine. NGO “GROUP OF INFLUENCE” is one of author of the Draft law on access to election rights of IDPs and other citizens.

² <http://www.msp.gov.ua/news/14748.html>

³ Resolution 2198 (2018) „Humanitarian consequences of the war in Ukraine” <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24432&lang=en>

To feel equal members of the new communities, it is necessary for IDPs to elect the authorities and the mayors in places where they moved. IDPs need conditions to exercise their constitutional right to vote without changing the registration of their permanent residence ('propiska'). According to the results of focus group discussions⁴ conducted by NGO "GROUP OF INFLUENCE" among IDPs, most respondents prefer not to change their place of registration. Retaining the place of residence registration in the occupied territories is primarily linked to at least some guarantee of maintaining their ownership of housing, which remains there.

Equally important is the fact that the registration in the non-government controlled areas enables an easier crossing of checkpoints and, in a way, helps IDPs not to lose connection with the place of their previous residence, relatives, and friends. It also facilitates access to their property abandoned during the displacement.

The IDPs also talked about their previous place of residence registration as a guarantee of citizens' rights. Cancellation of previous registration in the absence of opportunities to buy housing in a new place actually excludes people from the system based on territorial registration rights.

Not only does the lack of mechanisms to ensure the citizens' right to vote in single-mandate parliamentary and local government elections contradict the international standards – but it also violates the Ukrainian Constitution's commitment to universal and equal suffrage. Moreover, it restricts IDPs' integration into communities to which they have migrated.

By now, more than 4% of Ukrainian voters cannot fully participate in the election process and local democracy. They are still 'silent' and 'invisible', and for these people, the value of their voice is increasingly sensitive.

In the parliamentary elections in October 2014, IDPs (about 500 000 people as of October 2014) had no right to elect a member of parliament in majority constituencies in their new place of residence. 1,345,100 IDPs did not participate in the local elections of October 2015, and were not able to elect local councils deputies.

In the process of current decentralization reform, IDPs or citizens who are not registered in local communities do not have the opportunity to participate in forming local self-governance bodies through elections in territorial communities, city and oblast where they live.

Moreover, such local democracy instruments as electronic petitions, participation budgets, public hearings are also inaccessible to citizens who do not have an appropriate registration in the community of their actual residence.

The inclusive decision-making procedures are not widespread among Ukrainian local authorities, resulting in a high-level exclusion of a specific category of people from local democracy and violates their right to participate in public affairs.

⁴ 11 focus group discussions was conducted on 28.11.2016 – 4.12.2016 https://issuu.com/hawerand/docs/educational_leaflet

This is a clear violation of the principle of non-discrimination in ensuring equal rights, freedoms, and opportunities which slows the process of IDPs' integration to the local communities where they moved.

National Legislation and International Standards (with regard to internal displacement)

The Constitution of Ukraine and international standards clearly define the equality of rights of all citizens, particularly in matters of electoral law. International principles also oblige Ukraine to ensure these rights.

Article 38 of Ukraine's Constitution⁵ states that citizens have the right to participate in the administration of state affairs, All-Ukrainian and local referendums, freely elect and to be elected to bodies of state power and institutions of local self-government.

Article 14 of the Law of Ukraine "On ensuring of rights and freedoms of internally displaced persons"⁶ states that IDPs shall enjoy the same rights and freedoms as other persons that permanently reside in Ukraine in accordance with the Constitution, legislation of Ukraine and international agreements. Their discrimination upon exercising any rights and freedoms based on their internal displacement shall be prohibited.

One of the recommendations of Parliamentary hearings on IDPs' rights, which took place in February 2016 in the Verkhovna Rada⁷, is to develop a mechanism for implementing the political rights of IDPs, for bringing national legislation in line with international standards in the spheres of electoral process and policy concerning IDPs.

The Committee of Ministers of the Council of Europe (2006) and Parliamentary Assembly Recommendations 1877 (2009) define the obligation of States to ensure by law the rights of IDPs during the elections (including local).

The Parliamentary Assembly's Resolution 2198 (2018) "Humanitarian consequences of the war in Ukraine" urges the Ukrainian authorities to provide mechanisms for ensuring the voting rights of IDPs in all elections, including at local level⁸.

The United Nations Guiding Principles on Internal Displacement (1998) prohibit discrimination against IDPs as a result of their displacement in the enjoyment of the right to associate freely and participate equally in community affairs, the right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right.

⁵ <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

⁶ <http://zakon3.rada.gov.ua/laws/show/1706-18>

⁷ <http://zakon3.rada.gov.ua/laws/show/1074-19>

⁸ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24432&lang=en>

However, for the last four years, there have been no positive changes in the sphere of protection of political rights of IDPs. According to the Ukrainian Parliament Commissioner for Human Rights, such situation breaks the principle of non-discrimination as regarding ensuring equal rights and freedoms, and equal opportunities (article 2 of the Law of Ukraine "On Principles of Prevention and Counteraction of Discrimination in Ukraine"), makes indirect discrimination on signs of the place of residence and belonging to IDPs and contradicts standards of international law, the Constitution, laws of Ukraine, and also obligations of Ukraine for ensuring steady integration of IDPs according to a movement place⁹.

IDPs are not the only group that faces challenges to their enfranchisement in Ukraine. Other mobile communities, whose actual place of residence is not the same as their registered residence and voter address, also face obstacles to exercise their electoral rights.

The approximate number of Ukrainian voters whose political rights are limited because of their exclusion from the electoral process at the local level is 10 percent from the total number of voters (labor migrants, and almost 0.8 million people are those with no place of official registration).

Ways to increase the level of participation in political and public affairs

Aiming to resolve the outlined problem, in 2016 a group of independent experts developed a draft law №6240 on Ensuring Access to the Right to Vote of Internally Displaced Persons and Other Internal Migrants¹⁰. The Draft Law was prepared by the NGO "GROUP OF INFLUENCE" and Civil Network OPORA, in consultations with the IFES, Central Election Commission, representatives from the Verkhovna Rada, Ministry of temporarily occupied territories and IDPs in Ukraine, IDPs and other key stakeholders.

The Draft Law enables all Ukrainian citizens to vote in their actual place of residence by simplifying voter registration procedures and separating them from their formal registered places of residence. Amendments to the current Ukrainian legislation proposed by the draft provide that voters will be able to apply to vote in their place of actual residence, regardless of their formal place of residence registration. In case the amendments are adopted, voting rights of IDPs and other internal migrants will be protected through the possibility to change the voting address in the place of actual residence.

Draft Law No. 6240 was supported by 24 Members of Parliament, the representatives of all deputy fractions. However, this law is currently of little interest to MPs and requires information and lobbying support.

⁹ <http://www.ombudsman.gov.ua/en/all-news/pr/12915-nm-vidkrite-zvernennya-upovnovazhenogo-verxovnoii-radi-ukraiini-z-prav-ly/>

¹⁰ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61425

Recommendations

The search for urgent solutions for the IDPs, taking into account the specifics of the situation of citizens who are forced to leave their places of the previous residence, is an appropriate and internationally recognized practice in the field of internal movement. A fundamental review of the citizen's residence registration system and the introduction of specific opportunities for vulnerable groups can be effectively combined to tackle the comprehensive constraints to ensure the political rights of citizens.

NGO "Civil holding "GROUP OF INFLUENCE" urges States which faced the issue of internal displacement:

- To guarantee full Civil and Political Rights for IDPs
- To take all legal and practical measures to enable IDPs to exercise their right to vote in national and local elections and to prevent discrimination based on registration of the place of residence and that on a regional basis in exercising the right to participate in public affairs;
- To bring national laws related to citizens' participation in public affairs in compliance with international standards relevant to internally displaced persons, internal labor migrants and other categories of citizens;
- To create favorable conditions for the integration of internally displaced persons and their equal participation in managing issues at the regional and national levels;
- To protect political rights of citizens and strengthen them in participation in local democracy in places where they live by proposing alternative way and adopting necessary changes in legislation at regional and national levels;
- To eliminate obstacles for citizens through the reform of the residence registration system of citizens and to consider the possibility of simplifying voter registration procedures and separate the voting address from the formal registered places of residence.