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THE GOVERNANCE OF SOCIAL SUPPORT FOR INTERNALLY DISPLACED PERSONS IN UKRAINE

LOW STATE CAPACITY, CITIZENSHIP RIGHTS CAPTURE, OR BOTH?

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TCUP REPORT

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TCUP Report: The Governance of Social Support for Internally Displaced Persons in Ukraine: Low State Capacity, Citizenship Rights Capture, or Both?

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The Governance of Social Support for Internally Displaced Persons in Ukraine

The unprecedented displacement of more than 1.7 million Ukrainian citizens is a litmus test for the state apparatus, which struggles to guarantee the application of transparent crisis-response welfare policies. Managing forced migration has been used as a pretext to institute procedures that effectively limit citizens' rights, leaving the displaced with two possibilities: 1) registering as internally displaced persons (IDPs) and thus being entitled to receive social support but facing bureaucratic obstacles to receive entitlements (such as pensions) as their citizenship is questioned for political reasons, 2) refusing to register as an IDP and simply changing their permanent registration address, preserving their citizenship rights but relinquishing access to special social support such as compensation for lost property and housing assistance.

In both cases, navigating the complex social support system feeds the feeling of being out of place, revealing the risks of transforming the IDP social construct into a fixed status.

This report problematises the mechanisms that regulate state order in contexts of internal displacement and discusses the effects of burdensome social policies on IDPs' identity.

In 2014, Ukraine experienced its most challenging chapter in post-Soviet history with the annexation of Crimea in March and the armed conflict that began in April in eastern Ukraine, eventually resulting in the displacement of more than 1.7 million citizens. Because of imminent security threats such as war and persecution, Ukrainian citizens were left with little choice other than fleeing danger and moving to safer areas. The geographically localized dimension of the violent risks as well as the

unforeseen hostilities were crucial factors that influenced individuals' decisions to resettle and concurrently choose whether or not to register as IDPs within Ukraine's government-controlled areas (GCAs).

Paradoxical as it may seem, the complex IDP registration process is the main reason behind the lack of reliable information on the IDP population in Ukraine. Inconsistent application of international standards at the national level

and failure to show official identity documents have often prevented potentially eligible IDPs from registering as such. On the contrary, although seldom reported, formal renunciation of IDP status happens as a consequence of traumatic identity-control measures conducted by the national authorities. The fact of being a vulnerable category is not synonymous with greater protection: because IDPs are politically sensitive subjects, the state is interested in requiring formal IDP status to administer aid above and beyond regular citizenship services. Ultimately, internal migrants have not necessarily weighed such factors as stigmatization and overly bureaucratic barriers to accessing social benefits in their decision to apply for IDP status.¹

Sociological studies and interviews with IDPs have shown the impact of displacement procedures on IDPs' sense of belonging. When Ukraine's bureaucratic responses to situations of internal displacement result in the deprivation of previously enjoyed citizenship rights, IDPs report feeling alienated by being considered some kind of "second-class citizens," forgotten by their own state (Sereda 2020). This report focuses on the migration-citizenship nexus with reference to the phenomenon of internal displacement. To date, very little research has been done to provide a detailed analysis of how internally displaced persons challenge the traditional definition of citizenship.

Internally Displaced Persons: What's in a Name?

While refugees are protected by specific international laws, the conceptualization of IDP status is fluid. No consensus on the global dimension of internal displacement was reached by international and regional actors until a number of documents started to draw attention to this gap (see Cohen 2006, Metha and Napier-Moore 2011). Finally, the Guiding Principles on Internal Displacement were issued in 1998 by a team of independent experts chaired by Walter Kälin, an international human rights lawyer and the successor to the Representative of the Secretary-General for Internally Displaced Persons, Dr. Francis Deng, in 2004. The rationale behind this set of norms was to acknowledge and address the needs of IDPs caused

by their forced displacement. In order to answer to the lack of an international normative framework on the pressing issue of internal displacement, the document's thirty points were intended to fill the gap in international practice towards the internally displaced. As the terminology suggests, the Guiding Principles do not take a legally binding approach to internal displacement, thus leaving the question of how to protect the rights of IDPs only partially answered. Rather than issuing a concrete blueprint, the submitting group of drafters aimed to provide national governments with a model for respecting human rights standards in contexts of internal displacement (Kälin 2002).

The applicability of already existing human rights principles and humanitarian law to the separate legal framework regulating internal displacement inevitably poses the question of the international community's responsibility toward IDPs. A recent study by Bivand Erdal and Oeppen (2018) on conflict-related migration has been only partially successful in the deconstruction of the forced-voluntary dichotomy's stickiness in migratory decisions. Stemming from this sharp division, internal displacement comes to be seen as a temporary phenomenon, which in turn frames the question of IDPs in quantitative terms and equates the solution to their condition to a return home. However, situations of protracted conflict or lack of desirable security guarantees reveal the paucity of this assumption. When internal displacement becomes a permanent condition, then the Guiding Principles' focus on IDPs as inherently different from transnational refugees could reveal itself as a double-edged sword. Indeed, the ambiguity around the temporal character of internal displacement challenges the conceptualization of IDPs as a distinct social category.

The IDP Dilemma and the Securitization of Citizenship

When states face threats to their territorial sovereignty, categorizing IDPs as a separate group could create different layers of citizenship. In war-torn Ukraine, IDPs' self-conception as citizens is undermined through burdensome administrative and social policies. For instance, state authorities regularly question IDPs' inclusion in the national community when checking on their status: for IDPs, paperwork is not merely the material instrument to claim their social benefits. Unlike

¹ According to IOM's National Monitoring System Report on IDPs (2019), discrimination is felt across several life spheres, from employment and housing to interaction with local population and education.

other Ukrainian citizens, IDPs are expected to undergo multiple types of controls, e.g. periodic inspections of their place of actual residence in government-controlled areas (GCAs) and IDP database cross-checking by the Ministry of Finance of Ukraine and Security Service of Ukraine (SBU). In the case of displacement within the borders of a state, IDP documentation functions as an authentication of citizenship; displaced citizens have to take extra steps to prove that they deserve access to the same benefits other non-displaced citizens normally enjoy. Accordingly, internal displacement *de facto* precludes full citizenship status and holds a political connotation. In emergency conditions that are known as “state of exception,” the state is allowed to intervene by suspending legal norms in order to maintain the rule of law (see Agamben 2005).

The transformation of citizenship into identity management implies that the state can act through politics of “sovereign discrimination” to consolidate the vulnerability of stateless people and constrain access to a specific set of social and political rights. As far as internal migration is concerned, comparative migration and security studies have rarely questioned to what extent the securitization of citizenship has an impact on IDPs. IDPs are seldom taken into consideration when examining the effect of citizenship securitization because they physically move within their own state, which theoretically does not put them on the same level as stateless people. However, if a state experiences challenges to its territorial integrity, e.g. separatist tendencies and/or external occupation, what follows is a situation of exceptionality where citizens are forced to flee and register as IDPs in a different local community. In times of uncertainty followed by population changes, the state introduces administrative measures such as IDP registration to reorganize society: in practice, the pursuit of more security initiated by the state confirms a securitized approach to citizenship in which IDPs’ citizen rights are often restricted.

To summarize, citizenship appears to be a fluid concept that is not only managed, but also reconfigured by the state. In the case of internal displacement, national authorities are reluctant to recognize the “full citizenship” of IDPs that they enjoyed prior to their displacement; however, as a study conducted by Tania Bulakh illustrates (2020), they continue to be part of the state order, experiencing a kind of “controlled citizenship” that fuels marginalization and in turns lowers confidence in the state.

Pros and cons when applying for IDP status in Ukraine

In the early stages of the Donbas conflict, the Ukrainian government was not prepared for the massive migration flow. Absent a designated agency in charge of carrying out the registration of IDPs, Ukraine’s Cabinet of Ministers (CMU) adopted a by-law in October 2014 establishing an IDP registration procedure. Resolution No. 509 on Registration of Internally Displaced Persons: The Law on Ensuring Rights and Freedoms of Internally Displaced Persons came into force in November 2014, and it was Ukraine’s first piece of legislation specifically addressing internal displacement since the outbreak of the IDP crisis.

In response to the violation of national territorial sovereignty, the government of Ukraine required people living in government-controlled and people living in non-government controlled areas to register as IDPs in order to access their pensions. The effect of this act, CMU Resolution No. 637, in November 2014, was an increase in the number of applications for IDP status by people remaining in the conflict area. Because a large number of residents of non-government-controlled areas (NGCAs) registered as IDPs in order to access their pensions, the official number of IDPs was inflated in relation to the actual number of people who fled violence and needed integration in communities in GCAs. Residents of NGCAs—now registered as IDPs, even though they were not displaced to government-controlled parts of Ukraine—still faced hardship and potential threats when passing checkpoints into GCAs once every month to collect their pensions.

Regardless of qualifying for pension entitlements, pensioners residing in NGCAs and returnees were labelled by government authorities as “pension tourists,” thus implying that they were a sort of “fake IDPs” because they had not actually moved to GCAs. Arbitrary suspension of pensions and social payments prevailed over principles of humanitarian assistance, which was not seen as the top priority from state authorities of Ukraine. In 2017 alone, around 200,000 IDPs were stripped of their right to social assistance and lost their entitlements to social security provisions. Although the Ministry of Social Policy (MoSP) invoked the lack of banking infrastructure as one reason for interrupting pension payments to the displaced population in the NGCAs, a political motivation was arguably possible: the government’s preoccupation with potential “spillovers” of IDP social provisions to

finance non-recognized separatists.²

In principle, IDPs are entitled to protection as envisaged by the Constitution of Ukraine. Against this background, citizenship rights and freedom of movement encompass situations of forced migration inside the territory of the state. Moreover, Article 2 of the Law of Ukraine “On Citizenship of Ukraine” emphasizes “the impossibility of deprivation of citizenship... regardless of the citizen’s place of residence.”³ Finally, Article 24 underlines the equal constitutional rights and freedoms of each citizen before the law while it denounces any discriminatory practice that violates human and citizens’ rights standards. In accordance with the Constitution of Ukraine, Article 14 of the IDP law ensures that IDPs shall not be discriminated against on the basis of their displacement and, therefore, their citizens’ rights should be ensured. However, there are reasons to believe that the IDP law does indeed differentiate victims of displacement from other citizens of Ukraine. Contrary to the international normative framework on internal displacement, Ukrainians from municipalities that are not under the government’s control must register as IDPs in order to obtain a certificate that ensures their access to social services that are based on Ukrainian citizenship status. Through this procedure, the IDP category is used to recognize legal subjects under a permission-based system, rather than serving a humanitarian purpose.

Ultimately, the legal status conferred upon registered IDPs has the effect of increasing their stigmatization: instead of protecting IDPs from harm, their legal status separates them from non-displaced citizens. They must assume an extraordinary status to obtain the rights they should already have along with other Ukrainian citizens. State agencies must regularly verify whether IDPs continue to qualify as displaced or not. Although the principle of non-discrimination is well-grounded in national legislation, there are specific regulations that are detrimental for IDPs, if not in intent, then in effect. As a consequence of discriminatory policies aimed at providing “more security,” IDPs are perceived as a temporary aberration to the conventional notion of citizenship; therefore, instead of receiving the protection that their condition necessitates, they must prove that they are just as deserving as non-displaced citizens to



Oschadbank – the only bank which IDPs can use to receive their hard currency pension entitlements or social benefits. Source: Charitable Fund “Right to Protection.”

enjoy standard citizenship-based rights and services.

The existence of an international protection framework for IDPs on one side, and a registration system in Ukraine on the other side allow war-affected citizens to receive assistance, although this very same IDP certificate can paradoxically limit the smooth enjoyment of the full scope of citizenship rights.⁴ At the same time, it should be noted that important achievements have been reached: for instance, the adoption of the new electoral code of Ukraine in December 2019—after many amendments on earlier regulations—has put an end to IDPs’ disenfranchisement in local elections, eventually aligning with international recommendations.

When trying to envisage sustainable solutions for IDPs, the discrepancies between official IDP statistics and the actual number of displaced people continues to be one main point of concern. This problem is likely to persist, should the Ukrainian government fail to reintegrate the temporarily occupied territories. Because many IDPs feel integrated in their current place of resettlement and do not wish to return to their place of origin, the ascribed temporary dimension of displacement is soon questioned. Even if people wish to resettle permanently, the social support system in place inevitably incentivizes IDPs to

² Ukrainska Pravda, “Cabinet of Ministers Renewed Pension Payments to 90 thousand IDPs” (June 2016), accessed on June 15, 2020, <https://www.pravda.com.ua/news/2016/0/2/7110473>.

³ Verkhovna Rada of Ukraine, Law of Ukraine on Citizenship of Ukraine N 957-VIII (957-19) (2016): Article 2.

⁴ Managing internal displacement following international protection standards without a registration system in place at the national level is not easy to achieve; even in a best case scenario, being granted access to social benefits does not preclude discriminatory practices and a lack of consistent application of regulations.



Cash distribution for IDPs. Each beneficiary receives 1000 hryvnia or just over 40 USD. [IOM](#), July 2015.

remain displaced indefinitely because their access to services guaranteed by citizenship is mainly secured by their IDP status.⁵ Moreover, permanent residency registration (*propiska*) is tied to property ownership rights. The fact of not willing or not being able to change one's permanent registration address has to do with this outdated system, which requires a person to own a property in order to change permanent registration. In a situation of protracted displacement, renouncing the IDP status is a hard decision, mainly due to economic reasons.

The IDP-Citizenship Nexus: Renegotiating Identity and Belonging

In the long run, there is a risk that the tension between

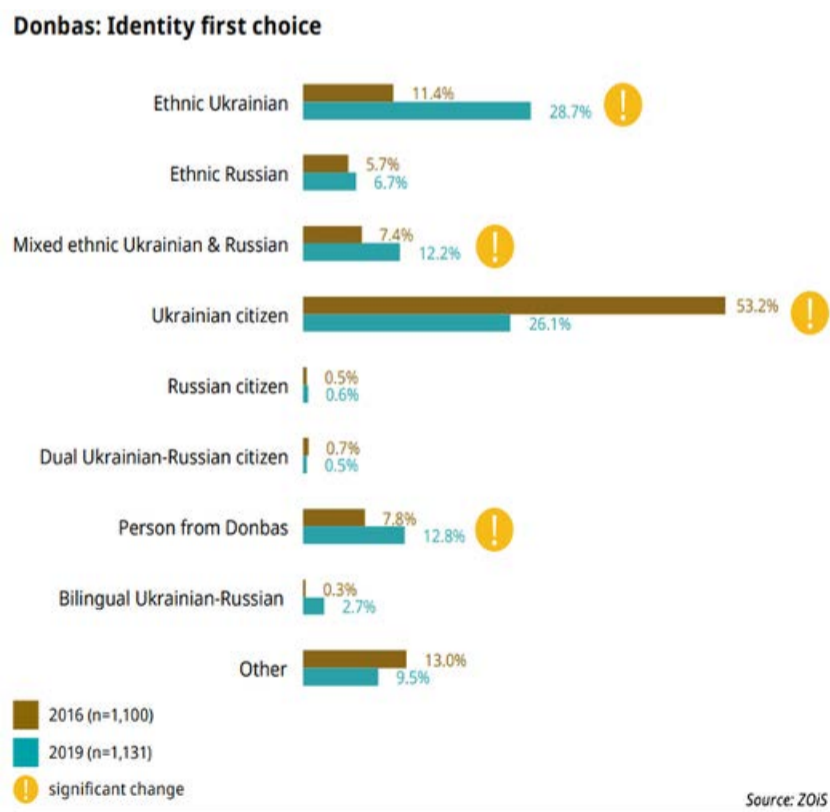
IDP and citizenship status can in turn influence identity and belonging. Based on a territorially centered conception of belonging—i.e., the idea that every person naturally belongs to a place or to a group to which he or she has a particular emotional connection—IDPs are seen as an abnormality to this order (see Malkki 1992). Against this background, traumas caused by external identification as a distinct category can generate a feeling of being “out of place” within the borders of the state where they are citizens. Here, the construction of IDPs’ self-identity is influenced by external entities such as the state and the local community; thus, their sense of belonging is constructed through exclusion. In this way, symbolic boundaries can transform into social boundaries that marginalize IDPs through social practices of differentiation and control.

Social marginalization following displacement has been observed not only in war-torn Ukraine, but also in other post-Soviet countries with a longer displacement

5 UN Briefing Note, June 2021.

history, such as Azerbaijan and Georgia. It is true that IDP registration is a standard process; however, the case of Ukraine is peculiar in terms of how IDPs relate to this category. As often happens, self-identification with a segment of the society is the result of a mutual recognition process carried out both from within a social group as well as from external agents like national authorities and those who do not fit into a certain category. In other words, both the authorities and non-IDPs must recognize what makes someone an IDP, and IDPs themselves must officially claim that status in order to access its benefits. Many IDPs primarily see their home as Ukraine—a national identity, rather than a local and/or regional one. Indeed, evidence from a public opinion poll conducted between 2015 and 2018 has shown that Ukrainian citizenship has become the main feature of self-identification for IDPs.⁶ Hence, claims for recognition as Ukrainian nationals show IDPs’ attachment to Ukraine, an attachment they share with other, non-displaced citizens.

6 Monitoring of the Institute of Sociology of the NASU “Ukrainian Society”, 2019. Available in Ukrainian at: <https://dif.org.ua/article/stav-lennya-naselennya-ukraini-do-vnutrishno-peremishchenikh-osib>



Comparing IDPs’ attitudes across years, there is reason to believe that the effects of government discrimination have resulted in a shift in the way IDPs from the GCAs identify themselves. [ZOiS Report 3/2019](#).

Although IDPs relocate inside Ukraine, they are treated differently from their fellow citizens by state and local administration officials. Considering that the international framework for IDP protection has earned the attribute “even softer than soft law” due to its fluid conceptualization (Kälin 2002: 7), the reiteration of discriminatory legislative provisions regulating IDPs’ access to fundamental rights should not come as a surprise. Despite amendments to national legislation aimed at reflecting the country’s commitment to international legal obligations and regional agreements, practical obstacles and inconsistent application of regulations leave space for future improvement.

In the challenging journey toward IDP enfranchisement, Ukraine has benefited extensively by incorporating best practices from the OSCE region where similar situations had taken place. Initially, at the peak of the displacement crisis, IDPs suffered from the *propiska* (internal passport) legacy, which restricted voting rights to those residing at their permanent registration address. In other words, someone registered as an IDP could not vote outside of the area of their official address—in non-government-controlled territories. However, if they changed their address in order to vote, they would lose their IDPs status and access to benefits, including restitution for damaged homes. Notably, in 2017, the Georgian government made the decision to reform the strict identification of IDPs based on their permanent residency. Following OSCE and Council of Europe recommendations, Georgian authorities allowed IDPs to change their official residential registration without risk of losing their IDP status. Similarly, following the adoption of a new Election Code in 2020 in Ukraine, which successfully separates the electoral address from a person’s place of official registration, the Central Election Commission has proactively worked to safeguard IDP voting rights.

In conclusion, the root causes of IDP stigmatization can be linked back to the unintended transformation of a rather vague definition into a rigid category that is at odds with the temporary dimension of displacement. When protracted conflict means that people no longer wish to return to their communities of origin, the right to receive economic compensation for lost property is soon replaced by willingness to permanently resettle in the GCA, giving up their IDP status. At the same time, the state has an interest in preserving the IDP status because it reinforces the strength of the nation-state to non-displaced people. If people in both GCAs and NGCAs register as IDPs, it means they have chosen to

identify with the Ukrainian nation, an identity that they will take with them if they return to their homes in the Donbas, potentially strengthening Ukraine's territorial claims in the future. Findings from Emma Rimpiläinen's paper (2020) have shown that the preoccupation with the Donbas stalemate and the IDP question has reinforced the nation-building narrative based on a solid political division between the Ukrainian national community and its enemies.

Closing the IDP Status Gap in Three Steps

The upsurge of forced migration studies concurrent with the rapid increase of IDPs worldwide opened the debate about whether IDPs should be considered a separate category from refugees, although they do not enjoy international legal recognition. As far as the case of IDPs in Ukraine is concerned, IDP status has transformed from a protection mechanism into a political tool that creates mechanisms for excluding certain people from full citizenship rights. Internal displacement in Ukraine is a topical but generally underestimated phenomenon which will affect future generations. To start off with, three steps should be considered in order to avoid the unintended consequences deriving from the shift of citizenship policy into politics of identity-management.

Judging from the troubled implementation of the Minsk Agreements to date it is unlikely that the Ukrainian government will ease legislative pressure (and the existing double standards) toward registered IDPs.⁷ The best solution would be to finally stop conceiving of IDP registration and the obtention of the IDP certificate as the gateway to fundamental citizenship rights. Instead, the main function of these instruments should allow a systematic monitoring of the real displaced population both in GCAs and NGCAs. It is therefore worth considering a reorganization of state regulations for allowing IDPs' access to citizenship rights.

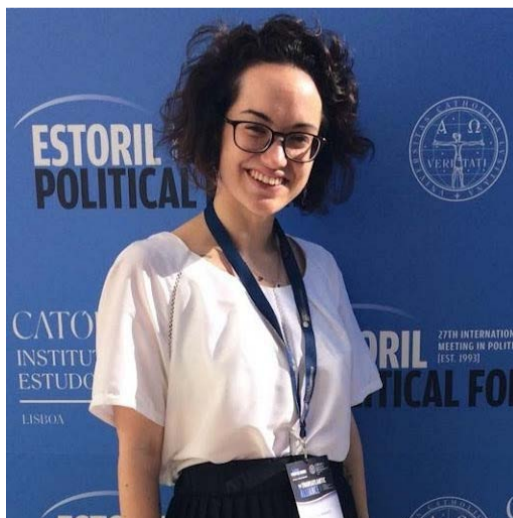
As a first step, the international community should call on the national authorities of Ukraine to undertake a less categorical approach to the IDP status, which was indeed caused by inconsistent application of discriminatory provisions. The practical obstacles faced by those who do manage to register as IDPs are at the basis of the many deficiencies deriving from an artificial label. A new strategy to ensure IDPs the full spectrum of citizenship rights cannot be implemented without having reviewed the understanding of the citizenship/forced migration nexus first.

The second step would require the amendment of the non-compliant national laws. This process must include several actors, from local administrations to civil society and spontaneous organizations. The last step is one of awareness-raising: following the decentralization plan of territorial-administrative reforms, the local authorities depending on central executive bodies should also be informed about the correct application of progressively inclusive regulations.

⁷ The Minsk Agreements are the main politico-legal framework for the negotiation of a solution to the Donbas conflict. Since 2015, the implementation of the agreements has been flawed for several reasons. Among them is the absence of a transformative purpose at the heart of the signed document and the protracted political unease. The Normandy format includes the main negotiators (top representatives from France, Germany, Ukraine and Russia) and it is considered another point of contention when discussing the willingness to make crucial changes for the Minsk II implementation.

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