

Mandate of the Special Rapporteur on the human rights of internally displaced persons

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Excellency,

I have the honour to address you in my capacity as United Nations Special Rapporteur on the human rights of internally displaced persons (IDPs), pursuant to Human Rights Council resolution 23/8, tasking me to enter into dialogue with Governments, United Nations agencies and other relevant actors on the issue of internal displacement.

Since I visited Ukraine in September 2014, I have been following developments in the country very closely. In this connection I would like to bring to the attention of you Excellency's Government, information on new legislative developments that I received subsequent to my visit.

In particular, I would like to refer to the Resolution No. 365 of the Cabinet of Ministers of Ukraine, dated 8 June 2016, entitled "Certain issues with providing welfare (social protection) payments to internally displaced persons" that I have received.

The above-mentioned resolution includes amendments to the Cabinet of Ministers Resolution No. 637 of November 2014, in addition to regulating the two following procedures: 1) the procedure for the assignment (reinstatement) of social payments to IDPs; and 2) the procedure for implementing control over social payments to IDPs according to their place of actual residence. The resolution lists all social payments which are regulated under the procedures, such as pensions, government grants, all types of social assistance and compensations, financial security, social services, subsidies and benefits paid from the State budget and funds of mandatory State social insurance. Under Ukrainian law, the above listed social payments are guaranteed to all eligible individuals (citizens or non-citizens of Ukraine), including IDPs.

After having carefully studied the resolution, allow me to share with you some preliminary concerns and recommendations. While aware that the resolution has already been adopted and published, I am concerned about the implementation of such procedures. The following comments are based on relevant provisions contained in international human rights instruments, including the Guiding Principles on Internal Displacement.

According to the translated version made available to me, in the first procedure relating to the assignment of social payments to IDPs, Paragraphs 7 and 8 stipulate that prior to assigning (reinstating) social payments to IDPs, a local social protection department must carry out verification of the IDPs' places of actual residence/stay and that based on the results of the verification, the local social protection department officers

will fill out a verification report on the financial and household state of the applicant's family. Only after such verification will IDPs be able to receive their social payments.

Furthermore, according to Paragraphs 2 to 4 of the second procedure for implementing control over social payments to IDPs according to their place of actual residence, such verification will be conducted biannually and additional visits to IDPs' homes could be initiated by State bodies on various grounds. Paragraphs 4 and 5 further retain the linkage of the IDP certificate with the access to social payments. Paragraphs 5 to 9 specify the procedure for the suspension of all social payments on the grounds of IDPs' absence during verification at the place of actual residence/stay registered with the local social protection departments. Finally, Paragraphs 16 and 18 stipulate that the reinstatement of the payments after suspension is possible within 2 months after the application for reinstatement has been submitted to the relevant authorities and within 6 months after the revocation of the IDP certificate.

If implemented, the above-mentioned provisions on verification impose significant restrictions on IDPs' right to freedom of movement as enshrined in Article 33 of your Constitution, and guaranteed by Principle 14 of the Guiding Principles on Internal Displacement and Article 12 of the International Covenant on Civil and Political Rights (ICCPR). The provisions could further violate the right to privacy and family life as prescribed in Article 17 of the ICCPR. Therefore, less intrusive measures should be considered in this regard.

The failure to undergo the verification for various reasons could lead to the revocation of all types of social benefits, to which IDPs are entitled by law. Without social protection payments, some of the most vulnerable IDPs could be deprived of means of subsistence, increasingly inciting them to return to the territories controlled by the armed groups. Thus, the procedures regulated by the resolution could have a serious impact on the lives of IDPs and are therefore in contradiction with Principle 18 of the Guiding Principles on Internal Displacement and Article 11 of the International Covenant on Economic, Social and Cultural Rights relating to the right to an adequate standard of living.

As demonstrated above, if implemented, these provisions could have a negative impact on the lives of IDPs and discriminate against IDPs across Ukraine, in direct contradiction with Articles 21 and 24 of the Constitution of Ukraine, Article 14 of the Law "On ensuring rights and freedoms of internally displaced persons", Principle 1 of the Guiding Principles on Internal Displacement, Article 26 of the International Covenant on Civil and Political Rights (ICCPR) as well as Article 7 of the Universal Declaration of Human Rights.

I would appreciate receiving clarifications about the adopted resolution and the time-frame for its implementation. While waiting for your response, I encourage your Excellency's Government to take all necessary measures to guarantee the rights of IDPs in line with the Guiding Principles on Internal Displacement and other relevant international human rights standards.

I remain at your disposal in order to pursue the constructive dialogue that we have been carrying out since my visit and would like to reiterate, as mentioned with your Excellency in the margins of the 32nd session of the Human Rights Council, my willingness to undertake a follow-up visit to Ukraine in September 2016 to follow-up on my recommendations and look at progress made and remaining challenges in supporting durable solutions for IDPs through directly engaging with your Excellency's authorities as well as other relevant stakeholders, including the United Nations Country Team in Ukraine.

Excellency, let me once again reiterate my offer of support and please accept the assurances of my highest consideration.

Chaloka Beyani
Special Rapporteur on the human rights of internally displaced persons