



## Submission by Human Rights Watch to the Committee on Economic, Social and Cultural Rights on Ukraine: *67<sup>th</sup> session, 2020*

This submission relates to the review of Ukraine under the International Covenant on Economic, Social and Cultural Rights. It focuses on discrimination against internally displaced persons (IDPs) in receiving pensions, poor and dangerous conditions at border crossings and the protection of students, teachers, and schools during armed conflict.

### **Discrimination Against Internally Displaced Persons in Receiving Pensions (articles 2 & 9)**

Currently, government policy requires pensioners from parts of eastern Ukraine under Russia-backed “separatists” control to register as internally displaced persons (IDPs) in government-controlled areas, maintain residential addresses there, and regularly travel to those areas in order to receive their pensions.

The requirement to register as an IDP as a condition for maintaining pension eligibility is set out in Cabinet of Ministers’ decrees adopted in 2014 and 2016.<sup>1</sup> Older people eligible to receive pensions must prove and maintain residency in government-controlled areas, and they are required to cross into government-controlled areas every 60 consecutive days. Unlike other pensioners living elsewhere in the country, they may not appoint an authorized representative to collect their pensions for them at the state bank. In practice, this means older people, many of whom have physical disabilities that impede their ability to walk easily, face repeated journeys across the separation line to collect their pensions (see section on border crossings below) or else have to leave their homes for the foreseeable future. Older people, who due to limited mobility, have not been able to cross into government-controlled areas to obtain displaced person status have had to forego their pensions altogether.

In July 2018, the Kyiv Administrative Court of Appeals upheld a lower court’s ruling finding several provisions of the Cabinet of Ministers decrees to be discriminatory on

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<sup>1</sup> Cabinet of Ministers of Ukraine Decree No. 637, entered into force November 5, 2014, <http://zakon2.rada.gov.ua/laws/show/637-2014-%D0%BF> (accessed August 29, 2018). Cabinet of Ministers of Ukraine Decree No. 365, entered into force June 8, 2016, <http://zakon3.rada.gov.ua/laws/show/365-2016-%D0%BF> (accessed August 31, 2018).

“territorial and displacement grounds” and in violation of IDPs’ rights to pensions and social protection. These included the decrees’ provisions authorizing social protection officials to visit an individual’s registered address any time if they have reason to believe that the displaced person might not live there. Under this inspection regime, if the person is not at home, officials leave a notice instructing the person to come in person to verify their residence address within three days. If they fail to do so, the government can stop paying pensions and other social benefits. Older people and local activists told Human Rights Watch that in practice, the authorities would suspend pensions and other welfare payments after the first visit without waiting for the individual to appear in person. Once an individual’s pension has been suspended, they have to reapply for it to be reinstated, an onerous process which can take months.

Following the court’s ruling, the Ministry of Social Policy stated that it would continue to verify displaced persons’ residences prior to granting them pensions or social benefits but that it would stop inspection visits to displaced persons’ homes.<sup>2</sup> In 2018, a lawyer with a Ukrainian human rights organization told Human Rights Watch that, to his knowledge, despite this statement, the ministry continued to inspect displaced persons’ registered residences.<sup>3</sup>

In March 2019, the government of Ukraine removed expiration dates for electronic passes that allow civilians to travel between government-controlled territory and areas controlled by Russia-backed armed groups in the country’s east. This is a small but important step toward easing the lives of the estimated one million people who journey across the front lines dividing the conflicting parties every month.<sup>4</sup>

*We encourage the Committee to make the following recommendations to the government:*

- Initiate or support legislation to drop the requirement for people from non-government-controlled areas to register as internally displaced persons in order to receive pensions.
- In the interim, drop the requirement to cross every 60 consecutive days and allow the appointment of an authorized representative to collect pensions for

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<sup>2</sup> Ministry of Social Protection of Ukraine, <https://www.msp.gov.ua/news/15636.html?PrintVersion> (accessed August 30, 2018).

<sup>3</sup> “Ukraine: Ensure All Pensioners Have Access to Benefits: Discriminatory Policies Restrict Older People’s Access to Pensions,” Human Rights Watch news release, August 31, 2018, <https://www.hrw.org/news/2018/08/31/ukraine-ensure-all-pensioners-have-access-benefits>

<sup>4</sup> Laura Mills, “Making Life a Little Easier on Ukraine’s Front Lines: Government Eases Crossing Pass Requirements, Should Stop Pension Discrimination,” commentary, Human Rights Dispatch, April 10, 2019, <https://www.hrw.org/news/2019/04/10/making-life-little-easier-ukraines-front-lines>

older people who continue to reside in separatist-controlled areas in order to alleviate the burden of making frequent trips across the separation line.

### **Poor and Dangerous Conditions at Border Crossings (articles 2 & 12)**

Ukrainian citizens have faced significant risks to their health and safety as they face extremely long waits when they cross the separation line between government-controlled and separatist-controlled areas.

Human Rights Watch observed in 2016-2017 that there is a general lack of infrastructure in the “grey zones” (the uncontrolled territory that lies between the two sides’ checkpoints) and crossing points did not have enough well-maintained toilets, shelters from inclement weather, and potable water stations. In addition, civilians waiting in line have faced risks to their lives as they were potentially exposed to shooting and shelling from fighting near the contact line and landmines in open fields near crossing points in the grey zone.<sup>5</sup>

Since then, the basic infrastructure has improved on the Ukrainian side through the support of international aid organizations and Ukraine’s international partners, such as the European Union, Canada, the United States, and others. However, the responsibility to maintain these facilities lies with the local administrations of the government-controlled Luhansk and Donetsk regions. There is an almost total absence of such infrastructure at the “separatists” checkpoints, which causes serious difficulties for civilians with certain health conditions or limited mobility and those with young children.

Human Rights Watch is particularly concerned about conditions at border crossings that place disproportionate hardships on older people, people with disabilities, pregnant women, and new mothers. During two research missions in 2018 and one in May 2019, Human Rights Watch learned that while priority crossing and assistance is available for older people, people with disabilities, women in advanced stages of pregnancy, and nursing women with infants, there was a serious lack of information about this, and border guards failed to identify and ensure those eligible for priority crossing and assistance are provided with it.<sup>6</sup>

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<sup>5</sup> Ukraine: Dangers, Unnecessary Delays at Crossing Points: Improve Security, Facilities Along the Line of Contact, Facilitate Better Crossing for Civilians,” Human Rights Watch news release, February 17, 2017 <https://www.hrw.org/news/2017/02/17/ukraine-dangers-unnecessary-delays-crossing-points>

<sup>6</sup> “Ukraine: Barriers to Free Movement for Older People: Dangerous Bridge from Armed Group Area,” Human Rights Watch news release, November 29, 2018, <https://www.hrw.org/news/2018/11/29/ukraine-barriers-free-movement-older-people>

Because of regulations on payments of pensions for people from separatist-controlled regions as described in the section above, older people constitute over half of all people making frequent crossings across the line of contact.

Older people with disabilities with whom Human Rights Watch spoke in 2018 said that Ukrainian border guards often did not grant them priority crossing without a hard copy of a certificate confirming their disability. In fact, many older people from “separatist”-controlled areas of eastern Ukraine do not bother registering their disability status, as the procedure is time-intensive and overly bureaucratic. Additionally, staff at local and international aid groups told Human Rights Watch that Ukrainian border guards often say that priority crossing is not a part of legal provisions regulating the movement of people along the line of contact, and therefore they do not have to enforce it.<sup>7</sup> However, during a meeting with Human Rights Watch in Kyiv in February 2017, several State Border Guard Service officials recognized the importance of priority lines for vulnerable categories of people and assured us that they would reinforce efforts to ensure that eligible individuals knew about their right to use them and had access to them.<sup>8</sup>

During research missions in 2018 and May 2019, Human Rights Watch found accessibility to be especially difficult for older people, particularly those with limited mobility or health conditions, at the Stanytsia Luhanska crossing point, which is the only operational crossing point in Luhansk region. It is the sole crossing point in eastern Ukraine that is pedestrian only: all others can be crossed by motor vehicle. Civilians crossing at this point must walk 1.5 kilometers to a bridge which had until recently needed reconstruction. Our May 2019 research found that although there were wheelchairs available on the government side of the crossing, there were only two State Emergency Service workers who are allowed to operate them and that they were mostly unused.<sup>9</sup> In August 2019, an electric cart was reportedly introduced to drive older people and people with disabilities across the checkpoint.<sup>10</sup> In November 2019, the major repairs to the bridge were completed. Both are positive developments.<sup>11</sup>

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<sup>7</sup> Ibid.

<sup>8</sup> “Ukraine: Dangers, Unnecessary Delays at Crossing Points: Improve Security, Facilities Along the Line of Contact, Facilitate Better Crossing for Civilians,” Human Rights Watch new release, February 17, 2017, <https://www.hrw.org/news/2017/02/17/ukraine-dangers-unnecessary-delays-crossing-points>

<sup>9</sup> “Ukraine: Barriers to Free Movement for Older People: Dangerous Bridge from Armed Group Area,” Human Rights Watch news release, November 29, 2018, <https://www.hrw.org/news/2018/11/29/ukraine-barriers-free-movement-older-people>

<sup>10</sup> Letter from Human Rights Watch to Volodymyr Zelensky, Ukrainian President, “Protection of Rights of Older Ukrainians in Donetsk and Luhansk,” July 1, 2019, [https://www.hrw.org/sites/default/files/supporting\\_resources/ukr\\_final\\_letter\\_zelenskiy\\_01july2019.pdf](https://www.hrw.org/sites/default/files/supporting_resources/ukr_final_letter_zelenskiy_01july2019.pdf)

<sup>11</sup> Olga Mishchenko, “На линии разграничения у Станицы Луганской восстановлен мост” *DW*, November 20, 2019.

*We encourage the Committee to pose the following questions to the government:*

- How does the government plan to improve maintenance and quantity of facilities at crossing points – such as shelters, toilets, and access to potable water?
- What steps does the government plan to take to ensure that priority crossing and assistive services are available to people with limited mobility at crossing points?

*We encourage the Committee to make the following recommendations to the government:*

- Support existing legislation that would delink pension eligibility from displaced person status, thereby eliminating the need for pensioners to register at addresses in government-controlled territory and having to travel to government held territory every 60 days.
- Increase the number of entry/exit crossing points and/or the number of staff at crossing points to alleviate long waits, which present particular hardships for older people, young children, pregnant women, and people with disabilities.
- Enforce court decisions, in particular by paying arrears to those pensioners denied their pensions because of these and other rules.

### ***Protection of Education During Armed Conflict (article 13)***

Since the beginning of the armed conflict in Ukraine, Human Rights Watch has extensively documented human rights violations by all parties to the conflict in eastern Ukraine. Hostilities have subsided since 2016, but the conflict has not ended and many concerns remain.

Numerous schools in conflict-affected areas made commendable efforts to minimize disruptions to children's education by switching to either distance learning or a hybrid of classroom and distance learning during intense periods of fighting. Distance education generally involved teachers providing assignments and collecting homework at the school or at student's homes, and then using methods such as telephone, email, and Skype to reach students to answer questions. Yet students and educators alike acknowledged that the quality of education children receive through distance learning was inferior to the quality of education received through classroom learning.

Human Rights Watch documented attacks on schools and military use of schools in Ukraine in 2016 and found that both sides of the conflict have carried out

indiscriminate or deliberate attacks on schools and used schools for military purposes.<sup>12</sup> Human Rights Watch recognizes that the government is not responsible for attacks on schools and military use of schools by Russia-backed separatists and that schools in separatist-controlled regions are not under its control. Below, we summarize our findings on infringements on the right to education in government-controlled areas, where the government has the power to make improvements. Human Rights Watch found that the destruction of vital educational infrastructure has affected access to education, with many children facing interruptions to their schooling due to evacuations and unsafe conditions. This destruction has also affected the quality of education, for example by causing overcrowding in classrooms as damaged schools await repairs. According to the UN's Office for the Coordination of Humanitarian Affairs, the temporary closing of schools in government-controlled areas in the first half of 2018 alone has affected the education of over 6,000 children.<sup>13</sup>

Human Rights Watch documented 15 attacks on schools that were not being occupied or used by the military and therefore did not appear to constitute military objects. Some of these attacks were carried out by government forces. A Ukrainian soldier told Human Rights Watch that a fire that destroyed a school building in Stanytsia Luhanska, a government-controlled area approximately 25 kilometers from Luhansk, was started by an airstrike carried out by Ukrainian government forces in August 2014.<sup>14</sup> When Human Rights Watch visited the school in November 2015, it was still in ruins.

Military use of schools not only infringes upon the right to education but also places students at risk. Ukrainian government forces have deployed in and near schools and used schools for various military purposes, including to deploy fighters, store weaponry, and use them directly as bases of operation due to their strategic locations. In a November 2015 meeting with the Ministry of Education and Science, officials told Human Rights Watch that they were aware that Ukrainian government forces have used schools for military purposes but said they did not collect data on it.<sup>15</sup>

During a Human Rights Watch mission to Novosvitlivka village, local residents said that in August 2014 Ukrainian military used the village's school as a base. When Human Rights Watch visited the school in September 2015, a school guard said that the school was destroyed by Grad rocket attacks during Ukrainian soldiers use of the

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<sup>12</sup> See Human Rights Watch's report, *Studying Under Fire: Attacks on Schools, Military Use of Schools During the Armed Conflict in Eastern Ukraine*, February 2016, <https://www.hrw.org/report/2016/02/11/studying-under-fire/attacks-schools-military-use-schools-during-armed-conflict>.

<sup>13</sup> "Attacks on Schools in Ukraine," *Ukraine Education Cluster*, July 11, 2018.

<sup>14</sup> Human Rights Watch interview with soldier, Stanytsia Luhanska, November 9, 2015.

<sup>15</sup> Human Rights Watch meeting with the Ministry of Education and Science, November 2015.

school. More than one year after the attacks, the school building was still largely destroyed. The guard said that the number of children attending the school was reduced by half and that the remaining children were attending a smaller school at the other end of the village, which was getting overcrowded as more children returned.<sup>16</sup>

The director of Kindergarten Number 3 in Ilovaisk, currently under rebel control, told Human Rights Watch that the Ukrainian military started using the kindergarten on August 7, 2014 and occupied it for 23 days: “When the soldiers came, we opened the doors and showed them that there was no enemy inside and that we were not hiding anyone. But still the armed men walked in and stayed. They broke all the doors, sinks, practically all the dishes. Furniture, kids’ beds – everything was either stolen or broken.” The principal said that while the kindergarten was being used by Ukrainian government forces, it sustained several direct hits, severely damaged the building.<sup>17</sup>

On August 18, 2014, government forces entered School Number 14 in Ilovaisk and set up a headquarters. The school principal told Human Rights Watch that soldiers remained there for three weeks. During their stay, the principal said, the soldiers damaged furniture, broke doors, and smashed computers. Researchers found several unexploded landmines on the school grounds, apparently ejected from a supply truck they were stored on when the truck was attacked while parked in the schoolyard.<sup>18</sup>

A staff member of the Yenakiieve Specialized School Number 1 for Orphans with Impaired Vision, in Yenakiieve, told Human Rights Watch that government forces deployed in the school in August 2014 and remained there for six months. All the children were evacuated. The school was severely damaged during fighting in February 2015 and was not operational when Human Rights Watch visited in September 2015.<sup>19</sup>

Rebel fighters broke down the front door to School Number 4 in Krasnohorivka during the summer holidays in July 2014, and deployed inside the school for approximately one week. After they left, soldiers from the Ukrainian army entered the school one Saturday in either late August or early September, and remained there for more than one year, until September 29, 2015. They told the teachers who tried to return to school that they could not enter their school because it was now a military site, made them stand on the roadside, and delivered their personal belongings to them. Tracks left in

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<sup>16</sup> Human Rights Watch interview with Vladimir, school guard, Novosvitlivka gymnasium, September 4, 2015.

<sup>17</sup> Human Rights Watch interview with Lubov Petrovna Strokina, principal, Kindergarten Number Three, Ilovaisk, September 3, 2015.

<sup>18</sup> Human Rights Watch interviews and visit, October 2014.

<sup>19</sup> Human Rights Watch interview, Specialized School Number 1 for Orphans with Impaired Vision, staff member, Yenakiieve, September 4, 2015.

the asphalt of the school basketball court indicate that a tank may have been parked there, and a teacher at the school speculated that the askew concrete column at the school exit may have been caused by poor tank driving. “We wrote to the administration, we complained about it, we even wrote to Kiev,” a teacher told Human Rights Watch, who also showed us a copy of a letter to the regional authorities, signed by dozens of parents and most of the school staff. Teachers at the school provided a long list of property looted during the occupation of their school by Ukrainian forces.<sup>20</sup>

Under Ukraine’s constitution, “Everyone has the right to education,” and that “complete general secondary education is compulsory,” and that the state is responsible for ensuring “accessible and free pre-school, complete general secondary, vocational and higher education in state and communal educational establishments.”<sup>21</sup> Ukraine’s “Law on Education” obliges the state to guarantee all students’ right “to have a safe and hazard-free conditions of studies.”<sup>22</sup> Ukraine’s Manual on the Implementation of the Rules of International Humanitarian Law in the Armed Forces states “As concerns children, international humanitarian law envisages the following: ... the right of children to receive an education shall be guaranteed.”<sup>23</sup>

On November 20, 2019, Ukraine became the 100<sup>th</sup> country to endorse the Safe Schools Declaration, an inter-governmental international commitment to protect education in armed conflict.<sup>24</sup> The declaration includes a pledge to use the *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict*.<sup>25</sup>

*We encourage the Committee to pose the following questions to the government:*

- Are explicit protections for schools or universities from military use included in any policies, rules, or trainings for Ukraine’s armed forces?

*We encourage the Committee to make the following recommendations to the government:*

- Commend the government of Ukraine on endorsing the Safe Schools Declaration, thereby committing to use the *Guidelines for Protecting Schools and Universities from Military Use in Armed Conflict*.

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<sup>20</sup> Human Rights Watch interviews with four teachers, School Number Four, Krasnohorivka, November 6, 2015.

<sup>21</sup> Constitution of Ukraine, art. 53.

<sup>22</sup> Law on Education, May 23, 1991, art. 51(1).

<sup>23</sup> Manual on the Implementation of the Rules of International Humanitarian Law in the Armed Forces, 2004, sec. 1.4.11.

<sup>24</sup> Yulia Gorbunova, “Ukraine Becomes 100th Country to Endorse Safe Schools Declaration: Over 750 Ukrainian Education Facilities Damaged, Destroyed in Fighting,” Human Rights Watch dispatch, November 20, 2019,

<https://www.hrw.org/news/2019/11/20/ukraine-becomes-100th-country-endorse-safe-schools-declaration>

<sup>25</sup> Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, March 18, 2014.



- Ensure that students deprived of educational facilities as a result of hostilities, the military use of their school, or the need for their school to be repaired or reconstructed, are promptly provided access to nearby alternative schools.
- Collect data on military use of schools by government forces and armed groups. Data should include the names and locations of the school; the purpose for which they are being used; the duration of the use; the specific security force unit or armed group using the school; impact on students unable to attend school; actions taken by the authorities to end military use of the school; and the damages sustained during the military use of the school.
- Continue to develop and share examples of its implementation of the declaration's commitments—including ensuring the continuation of education during armed conflict, and concrete measures to deter the military use of schools—with this Committee and other countries that have endorsed the Safe Schools Declaration.