

**Information for compiling the List of Issues for the review of Ukraine’s 8th report under the International Covenant on Civil and Political Rights**

submitted to the United Nations Human Rights Committee (for its consideration at the 127 Session (14 October 2019 - 8 November 2019)) by Norwegian Refugee Council’s country office in Ukraine

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| The Office of the Norwegian Refugee Council (**NRC**) in Ukraine highly appreciates the opportunity to provide the United Nations Human Rights Committee (**the Committee**) with information that could be relevant for the Committee’s consideration during the compilation of the list of issues (**LOI**) to be presented to Ukraine in the frames of its preparation and submission of the 8th report under the International Covenant on Civil and Political Rights[[1]](#footnote-1) (**ICCPR**).  Due to the concise character of the submission, NRC has focused its contribution on selected issues of concern related to the following rights:   * Right to liberty of movement (Article 12 read in conjunction with Article 2(1) and (3) ICCPR); * Right to recognition everywhere as a person before the law and the entitlement of every child measures of protection as are required by his status as a minor, to be registered immediately after birth, to have a name and to acquire a nationality (Articles 16 and 24, read in conjunction with Article 2(1) ICCPR).   For any additional information, please contact Ms. Kristina Nechayeva, Protection and Advocacy Coordinator, NRC Ukraine, via e-mail: [Kristina.nechayeva@nrc.no](mailto:Kristina.nechayeva@nrc.no) or by phone: +38 067 828 58 44 or +38 050 468 45 24. |

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[**II**. **Registration of births in the non-Government controlled areas in eastern Ukraine – the right to recognition everywhere as a person before the law and the entitlement of every child measures of protection as are required by his status as a minor, to be registered immediately after birth, to have a name and to acquire a nationality (Articles 16 and 24, read in conjunction with Article 2(1) ICCPR)** 10](#_Toc18099260)

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# Background information

1. As a result of the outbreak of hostilities in eastern Ukraine in 2014, the State territory has been split between Government-controlled areas (**GCA**) and non-Government controlled areas (**NGCA**). As a result, a once-integrated community is now divided by a 427-km long front-line (the so-called ‘**contact line**’), with a system of entry-exit checkpoints (**EECPs**) installed on both sides by the parties to the conflict.
2. Armed clashes, which continue to the present day, have resulted in significant losses among civilians, large-scale displacement, destruction or damage to the property of the conflict-affected individuals, including thousands of hectares of arable land heavily contaminated by mines and unexploded ordnance.
3. Due to the loss of control over a part of its territory and accompanying security concerns, Ukraine withdrew State bodies and services from NGCA and introduced control measures over the movement of people across the contact line (comprising permit system and other additional measures). As a result of being cut off from State services of Ukraine, residents of NGCA now need to undertake often long, exhausting and costly travel to GCA in order to get access to basic services and to claim their entitlements. However, even if people of concern manage to reach GCA, they still encounter a number of obstacles in accessing a wide range of civil, political, economic, social and cultural rights.
4. Over the last several years, the Ukrainian Government failed to facilitate the access of the conflict-affected population to their rights and freedoms, but rather adopted certain policies with discriminatory effect and in contravention to Ukraine’s international obligations. In addition, the Government of Ukraine should step up the efforts on exploring and designing, *in good faith*, the ways to safeguard the civil and political rights for all categories of the conflict-affected individuals, including residents of NGCA who commute to GCA, those who are not able to cross the contact line, internally displaced persons (**IDPs**) and, finally, the most vulnerable and disadvantaged.
5. Ukrainian legislation enshrines the freedom of movement and provides for the conditions under which it can be limited. Currently, a number of restrictions introduced in the relevant *bylaws* in relation to the armed conflict in Donetsk and Luhansk regions, some of which can be justified on the basis of security considerations and legitimate concerns the State may have. However, some legal rules and administrative practices appear to amount to *excessive/disproportionate restrictive measures* or those which may be applied in an *arbitrary* manner.
6. As a reactive measure to the loss of control over part of its territory and in contrast to the administrative procedure through which competent authorities afford the state birth registration services Ukraine to everyone in the national jurisdiction, Ukraine introduced a *simplified* judicial procedure for registration of births that took place in NGCA. In addition to the *discriminatory* character of the procedure, multiple practical barriers frequently make the registration service based on the court procedure *inaccessible* for many families, especially the most vulnerable ones, leaving a large number of children born in NGCA outside the state system of birth registration, triggering all sorts of associated risks for these children.
7. It is worth noting that Ukraine has an elaborated legal system regulating a wide range of issues in great detail. However, some of the procedures and regulations are not adapted to the armed conflict setting, leaving individuals within the jurisdiction of Ukraine without an avenue for a required action or an *effective remedy* to claim redress.
8. Recognising difficulties and resource constraints that Ukraine has because of the armed conflict, NRC has focused on the areas where a change of an approach and policies may bring Ukraine’s actions into compliance with international law and have a positive impact on access of concerned individuals to their fundamental rights, such as freedom of movement and access to the State birth registration system.

# Crossing the contact line in the conflict zone in eastern Ukraine – the right to liberty of movement and freedom to choose residence (Article 12 read in conjunction with Article 2(1) and (3) ICCPR)

## Key elements of the applicable legal framework

1. Article 12 of the ICCPR provides that

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

[…]

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant. […]

1. Therefore, the right to liberty of movement is subject to limitations, which ‘must not nullify the principle of liberty of movement’[[2]](#footnote-2). In other words, ‘the relation between right and restriction, between norm and exception, must not be reversed.’[[3]](#footnote-3)
2. It is worth noting that the burden of justifying a limitation upon a right guaranteed under the ICCPR lies with the state[[4]](#footnote-4).
3. The laws introducing restrictions ‘should use precise criteria and may not confer unfettered discretion on those charged with their execution’[[5]](#footnote-5) and shall provide adequate safeguards and effective remedies against illegal or abusive imposition or application of limitations on human rights.[[6]](#footnote-6) The availability of the effective remedy for an interference with the right or its violation is also underpinned by Article 2(3) ICCPR.[[7]](#footnote-7)
4. To be permissible, limitations shall be governed by the following principles:

### Grounds for restrictions provided by law

1. The requirement for limitations to ‘be provided by law’ encompasses several elements, including:

* limitations shall be provided for by ‘*national law of general application* which is consistent with the Covenant and is in force at the time the limitation is applied’[[8]](#footnote-8);
* limitations on the exercise of a right in question ‘*shall not be arbitrary or unreasonable*’[[9]](#footnote-9);
* legal rules limiting the exercise of a right in question ‘shall be *clear and accessible to everyone*’[[10]](#footnote-10)
* law introducing limitations shall provide ‘*[a]dequate safeguards and effective remedies […]* against illegal or abusive imposition or application of limitations’[[11]](#footnote-11).

1. Moreover, ‘[t]he law itself has to establish the conditions under which the rights may be limited. State reports should therefore specify the legal norms upon which restrictions are founded.’[[12]](#footnote-12)

### Legitimate aims of limitations

1. Article 12 (3) ICCPR authorises the State to restrict the rights concerned only to protect national security, public order (*ordre public*), public health or morals and the rights and freedoms of others. In particular, to justify measures limiting liberty of movement, national security may be invoked [1] ‘only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force’[[13]](#footnote-13) and [2] only ‘when there exists adequate safeguards and effective remedies against abuse.’[[14]](#footnote-14)

### The requirement of necessity, incorporating proportionality principle

17. Article 12(3) ICCPR clearly indicates that it is not sufficient that the restrictions serve the permissible purposes; they must also be *necessary* to protect them. The concept ‘necessary’ implies that the limitation:

(a) is based on one of the grounds justifying limitations recognised by the ICCPR,

(b) responds to a pressing public or social need,

(c) pursues a legitimate aim, and

(d) is proportionate to that aim[[15]](#footnote-15).

18. Thus, in addition to the appropriateness to achieve their protective function, restrictive measures must conform to the principle of proportionality, denoting that ‘they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.’[[16]](#footnote-16) In other words, a State resorting to a limitation ‘shall use no more restrictive means than are required for the achievement of the purpose of the limitation.’[[17]](#footnote-17)

19. The principle of proportionality shall underpin not only in the law that frames the restrictions, but the application of the law by administrative and judicial authorities. Moreover, ‘States should ensure that any proceedings relating to the exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided.’[[18]](#footnote-18)

20. Laws imposing limitations on the exercise of human rights shall not be arbitrary or unreasonable.[[19]](#footnote-19)

### Consistency with other rights and principles of equality and non-discrimination

21. The application of the restrictions permissible under Article 12(3) ICCPR needs to be consistent with the other rights guaranteed in the Covenant and with the fundamental principles of equality and non-discrimination.[[20]](#footnote-20)

22. The restrictions on the freedom of movement may entail violations of other rights guaranteed by the ICCPR, in particular, the right to protection against arbitrary or unlawful interference with privacy, family, home or correspondence.[[21]](#footnote-21) In addition, the excessive restrictions adversely affect selected social and economic rights which are dependent on realisation of the freedom of movement, such as the right of everyone to the enjoyment of the highest attainable standard of physical and mental health[[22]](#footnote-22), the right to social security[[23]](#footnote-23), the right of everyone to the enjoyment of just and favourable conditions of work[[24]](#footnote-24).

## Key elements of the applicable national legislation

23. Article 33 of the *Constitution of Ukraine*[[25]](#footnote-25) enshrines the freedom of movement subject to limitations established by law:

Every person legally staying in the territory of Ukraine shall be guaranteed freedom of movement and travel, free choice of place of residence, and the right to freely leave the territory of Ukraine, with the exception of restrictions stipulated by law.

A citizen of Ukraine may not be deprived of the right to return to Ukraine at any time.

24. The situation of the armed conflict on the territory of Ukraine has resulted in the introduction by the Ukrainian authorities of certain restrictions to the freedom of movement in the conflict zone, in particular, the establishment of the five entry-exit checkpoints through the contact line, the permit system for the movement of people through the contact line and severe restrictions on the transportation of goods through the contact line.

25. The Law of Ukraine‘*On freedom of movement and free choice of residence in Ukraine*’[[26]](#footnote-26) in its Article 12 lists, among others, ‘the temporary occupied territories’[[27]](#footnote-27) as the area where the freedom of movement can be limited according to law. The provision also foresees that the freedom of movement can be restricted in other cases prescribed by law.

26. The Law of Ukraine ‘*On the peculiarities of State policy on ensuring Ukraine’s State sovereignty over temporarily occupied territories in Donetsk and Luhansk regions*’[[28]](#footnote-28) (*Law on Reintegration of Donbas*) also provides a legal ground for restrictions on the freedom of movement in the areas where national security and defence measures are taken in response to ‘the armed aggression of the Russian Federation in Donetsk and Luhansk regions’, for instance,

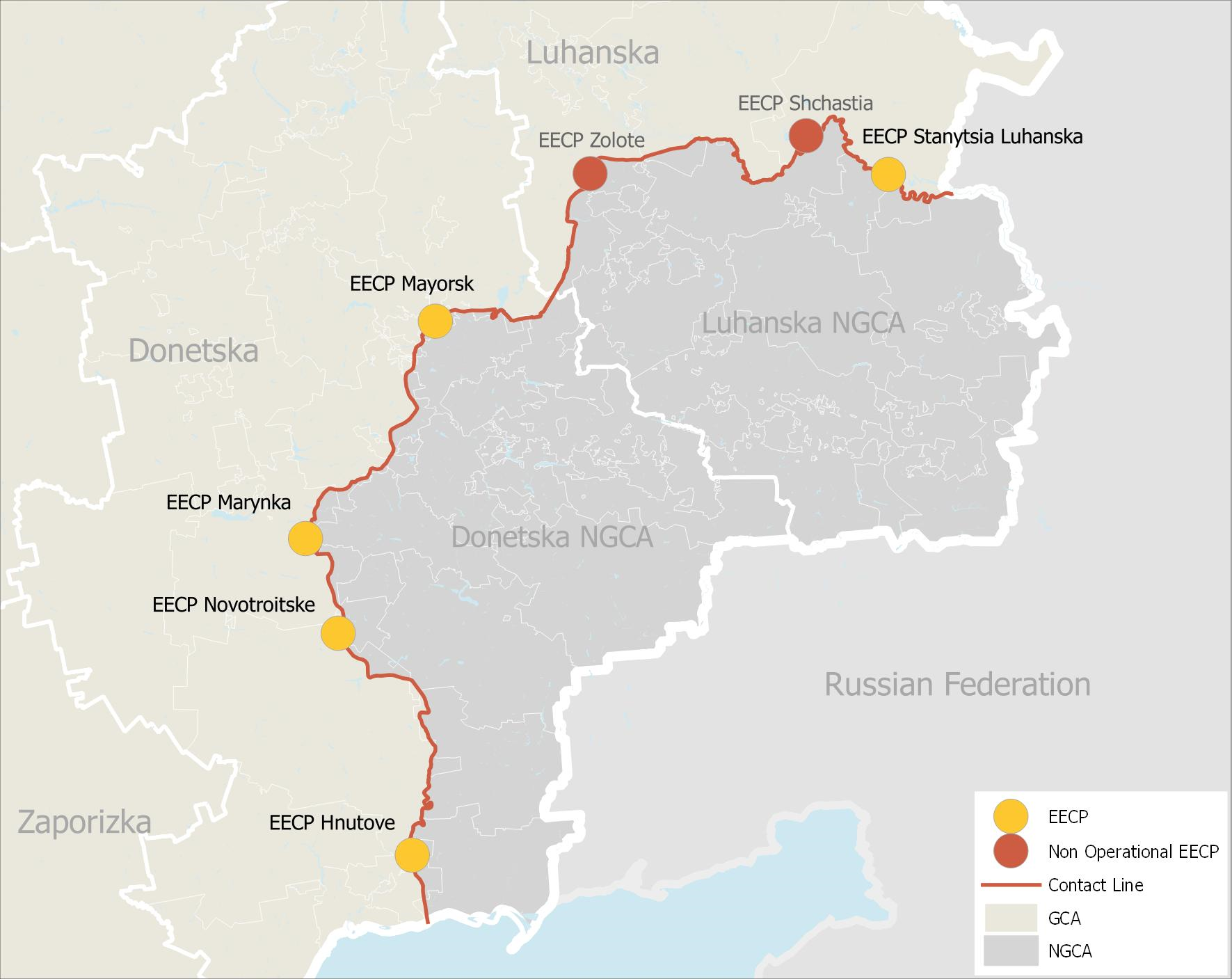
* the authorisation of such movement exclusively through the checkpoints (Article 12(1) thereof);
* authorisation of competent authorities and designated officials to resort to specific measures of control, including verification of identity documents (Article 12(6)(3) thereof).

27. According to the *Law on Reintegration of Donbas*, the procedure of movement of people and transfer of goods through the contact line shall be adopted by the Cabinet of Ministers of Ukraine.

28. On 17 July 2019, a new regulation on the issue was adopted by the Cabinet of Ministers of Ukraine.[[29]](#footnote-29) However, as of 30 August 2019, the official text of the new regulation has not been made public yet.

## Current situation with the freedom of movement – major concerns

29. As a result of the armed conflict in eastern Ukraine, the State territory has been divided into government-controlled areas (**GCA**) and non-government controlled areas (**NGCA**) by a 427-km long front-line (**contact line**), with a system of entry-exit checkpoints (**EECPs**) installed on both sides by the parties to the conflict.



30. There are four EECPs in Donetsk region (‘Maiorske’, ‘Mariinka’, ‘Novotroitske’ and ‘Hnutove’) and one – in Luhansk region (‘Stanitsa Luhanska’).

31. In average, every month, there are more than 1,1 million individual crossings through the contact line.

32. According to the State Border Guard Service of Ukraine, in July 2019 alone, 1,297,000 individual crossings took place in both directions through the five EECPs.[[30]](#footnote-30)

33. Out of 1,297,000 crossings in July 2019, 61% were made by people aged over 60 years.[[31]](#footnote-31) In 2018, the total amount of crossings to NGCA was 7,464,000, and from NGCA the number of crossings amounted to 7,453,000 from the temporarily occupied and uncontrolled territories of Ukraine.[[32]](#footnote-32)

34. People move through the contact line[[33]](#footnote-33) for family visits, to obtain their pension[[34]](#footnote-34), to get documentation issued by the Ukrainian authorities and other legal services, to check on their property on the NGCA side,[[35]](#footnote-35) or to access services, such as healthcare or education. However, due to the limitations imposed on crossing the contact line, and heavy bureaucratic requirements, every month hundreds of thousands of individuals face difficulties in crossing the line that divides a once-integrated community.

35. Therefore, in the situation of the armed conflict in eastern Ukraine the limitation of liberty of movement has a significant impact on a wide range of human rights of concerned individuals and their access to public services (family visits, education, healthcare, bank payments, postal services, checking on the property and belongings *etc*.).

36. In addition to the continuing risks posed by the sniping activities of parties to the conflict, shelling, mines and explosive remnants of war, individuals crossing the contact line still need to queue for several hours, either in harsh winter conditions or under the scorching sun in summer, with often inadequate hygiene facilities, lack of drinking water and available first aid or insufficient shelter from extreme temperatures.

37. Despite the recent significant improvements of the conditions at the checkpoints made by the authorities[[36]](#footnote-36), humanitarian organisations routinely encounter incidents of people losing consciousness due to heat and humidity at EECPs[[37]](#footnote-37) or even of cases of death at the checkpoints because of health conditions.[[38]](#footnote-38)

38. Certain limitations, provided by law and put on the freedom of movement on the ground of the national security in the situation of the armed conflict, are justified, in terms of necessity and proportionality: these include, for example, introducing checkpoints and roadblocks as well as additional measures of control such as verification of identity documents, searches of vehicles *etc*.

39. In contrast, **some other restrictive measures appear to be disproportionate, in addition to be introduced in bylaw acts, in contravention to the Ukraine’s obligations under the ICCPR, the Constitution and laws of Ukraine.**

### Permit system – a restrictive measure introduced in the bylaw, placing a disproportionate burden on the most vulnerable

40. Though the text of the newly adopted instrument regulating crossing the contact line is not publicly available yet, it appears that the permit system, introduced in January 2015, will remain in force, however, there will be a possibility to receive permits for an indefinite period – a provision that existed in the previous versions of the document, but has never been enforced.

41. In order to receive a permit, an individual should submit an electronic application at the Security Service’s website or a written application at the coordination group/coordination center, the decision on which is provided in 15 days after the application’s registration.[[39]](#footnote-39) The current draft introduced an additional requirement to provide a copy (a hardcopy or a scanned copy) of the identity document in the process of the submission of the application for the electronic permit.[[40]](#footnote-40) This constructs an additional barrier for the most vulnerable categories of conflict-affected population in crossing the contact line.

42. Given the high percentage of older people crossing the contact line and their inability to independently submit an application for a permit, as well as in light of occasional malfunctioning of the electronic system not displaying the information on the permit or getting such information lost and frequent non-availability of representatives of the coordination groups at the checkpoints, the presently existing system appears to be not accessible to a number of individuals crossing the contact line, especially the most vulnerable, such as residents of NGCA, people of older age, people with disabilities, low-income families or those from remote localities with a limited or no access to internet.

43. The system of control measures foresees that all the individuals crossing the contact line shall present their identity documents – a requirement which in majority of cases is sufficient for travelling of Ukrainian citizens abroad.

44. Moreover, a new regulation recognises the possibility of the authorities to handle the crossings through the contact line without a permit (but on the basis of the decision of the head of coordination center in the circumstances when individuals flee from negative consequences of the armed conflict, acts of violence, human rights violations and emergencies of technological character.[[41]](#footnote-41)

45. Among others, these considerations point to the conclusion that the verification of the identity documents is presumably capable of accommodating the security considerations advanced by the competent authorities and thus could be a sufficient measure of control.

46. ***With a recognition that in certain contexts the use of permit system can be justified by the security considerations, it is worth questioning the necessity and proportionality of introducing in the bylaw such restrictive measure as permits for the purpose of crossing the contact line in Donetsk and Luhansk regions of Ukraine, which does not replace the system of verification of identity documents established by the law, but rather supplements it with additional requirements posing a concern from both legal and humanitarian perspective.***

### Public transportation

47. Another restriction placing a disproportionate burden on the most vulnerable categories of those who cross the contact line is that public transportation does not run across the contact line, transforming journeys that used to take minutes into time-consuming and extremely expensive travels. This ban on regular passenger transportation, introduced in 2017[[42]](#footnote-42), is very burdensome for those who do not have their own means of transportation, including older people, people with disabilities, financially vulnerable families. Individuals have to use the services of unofficial service-providers taking advantage of the situation.

48. **This situation when the official railway and bus transportation is prohibited without providing substantiated security-related reasons raises the question of *arbitrary or unreasonable* nature of this particular restriction, which was also introduced in the bylaw,[[43]](#footnote-43) but is not provided for by any applicable law.**

### Additional requirements applied in practice but are not foreseen by legislation

49. In moving in the areas along the contact line and in the so-called ‘grey zone’ individuals face unsubstantiated requests from the officials manning the roadblocks, as a precondition for the movement, to present a confirmation of the registration of the place of residence in the settlement in this area, or a certificate of the internally displaced person, or to have a person’s name in the list of inhabitants compiled and submitted by the local authorities.

### Transportation of goods/personal belongings

50. The previous regulation (which is, as of 20 August 2019, still applied in practice) introduced an approach, according to which only permitted goods listed exhaustively were allowed to the transfer through the contact line. This led to an extreme hardship placed on the conflict-affected individuals: very often people had to throw away their personal belongings, including medicines, food items, house-ware or electronic appliances, items of sentimental value.

51. The new regulation to be introduced has changed the approach from the authorised to prohibited goods’ list. However, the text of the particular regulation which is to govern the transfer of goods is being elaborated by the Cabinet of Ministers of Ukraine.

52. **It is critical to ensure that the list of goods prohibited for transfer through the ‘contact line’ is kept to the minimum justified by security reasons. Even in these circumstances, there should be established for concerned individuals a clear and accessible procedure of appeal of decisions taken by the authorities at the checkpoints. This will enable the regulation introducing the limitation and placing restriction to adapt to the maximum extent feasible to the particular circumstances and accommodate specific needs of concerned individuals.**

### Transportation of cash

53. The new regulation, as well as the previous one, does not regulate the issue of carrying cash through the contact line (a clear procedure governing the issue, the permitted amount of cash to be transferred and its currency). **This legislative gap often leads to the situation that people have to hide cash in their belongings, are afraid to report that they carry it or to *arbitrary* confiscations.**

### Effective remedy to appeal the decision of the competent authorities

54. The functions related to the general coordination activities, manning checkpoints, processing documents authorising individuals to cross the contact line and transfer goods, maintenance of the facilities at the checkpoints *etc*. are incumbent upon various state structures, including the Armed Forces of Ukraine, the State Border Guard Service of Ukraine, the State Fiscal Service of Ukraine, the National Police of Ukraine, the National Guard of Ukraine.

55. There are several areas of normative regulation where a decision is taken on the ground by authorised personnel/representatives of the State (*e.g*., by the Coordination Group, the State Border Guard Service of Ukraine), sometimes in the absence of clear, precise and unambiguous criteria applied to the situations (*e.g*., return of vehicles from NGCA to GCA, bringing cash through the contact line).

56. **Under these circumstances, the relevant regulation should clearly articulate a procedure to appeal/challenge decisions and actions of the competent authorities which would provide a remedy for concerned individuals against unlawful or abusive application of restrictive measures**.[[44]](#footnote-44)

# Issues for consideration in the LOI

**57. Security and safety concerns at the entry-exit checkpoints in Donetsk and Luhansk regions of Ukraine**

* Given the security situation and the direct exposure of individuals to negative consequences of armed conflict while they cross the checkpoints, please provide information on measures that are envisaged to avoid or minimise the security risks for concerned individuals.
* Please provide information on the availability of hygiene facilities, drinking water, first aid services or shelter from extreme temperatures at the checkpoints, information on which state structures are responsible for providing and ensuring sustainability of each of these services.

**58. State policy introducing the permit system and other restrictive measures (including prohibitions) by virtue of the bylaw act**

* Please provide information on the justification of introducing permits as a precondition for the movement through the contact line.
* Please provide information on whether the permit system governing the movement through the contact line in Donetsk and Luhansk regions provided in a *national law of general application* (закон) which is consistent with the ICCPR and is in force at the time the limitation is applied.
* Please provide information on measures taken to ensure that the current system of application for permits is accessible to all categories of individuals crossing the contact line and accommodates specific needs of various categories of concerned individuals (people of older age, persons with disabilities, vulnerable families in remote locations with no or limited access to Internet).
* Please provide information on whether the regulation governing the movement of people through the contact line establish/refer to a procedure of appeal. Please provide information on whether an effective procedure of appeal/complaint is put in place to appeal the decisions of the competent authorities at the checkpoints.
* Please provide justification and a legal ground provided in a *national law of general application* (закон) of the ban on the passenger transportation (bus and railway) through the contact line.
* Please provide information on measures taken by the competent authorities to cease the arbitrary and unlawful practice at the roadblocks to require concerned individuals to produce additional documents, not foreseen by the regulation in force.
* Please provide information on measures taken by the competent authorities to hold officials accountable for the arbitrary interference into the freedom of movement in contravention to Ukrainian legislation and international obligations of Ukraine.
* Please provide information on measures taken to introduce a new approach governing the movement of goods through the contact line by adopting a list of prohibited items keeping it to the absolute minimum and accompanied by an effective procedure of appeal for concerned individuals.

**59. Adequate safeguards and effective remedy against unlawful or abusive application of limitations (restrictive measures)**

* Please provide information on safeguards and remedies the State affords to concerned individuals in relation to measures restricting freedom of movement in the conflict zone in Donetsk and Luhansk regions.

# Registration of births in the non-Government controlled areas in eastern Ukraine – the right to recognition everywhere as a person before the law and the entitlement of every child measures of protection as are required by his status as a minor, to be registered immediately after birth, to have a name and to acquire a nationality (Articles 16 and 24, read in conjunction with Article 2(1) ICCPR)

## 2.1. Relevant provisions of the ICCPR

**60. Article 16 ICCPR provides that ‘[e]**veryone shall have the right to recognition everywhere as a person before the law.’ Article 24 **ICCPR reads as follows:**

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

61. These two provisions are underpinned by Article 2(2) ICCPR stipulating that ‘[w]here not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.’

62. The cumulative application of these provisions explicitly points to a States’s obligation to take measures ‘with a view to affording minors greater protection than adults’[[45]](#footnote-45), including ensuring proper functioning of the birth registration system and guaranteeing a full and non-discriminatory access to rights to all children within the national jurisdiction of the State in question.

63. Article 24(2) ICCPR expressly enunciates the right of every child to ‘be registered immediately after birth’. Birth registration is intrinsically linked to the recognition of the child’s legal personality[[46]](#footnote-46) and serves as a precondition for accessing the entire spectrum of rights, including the right to acquire a nationality, as well as accessing State services, such as education and healthcare, and enjoying other measures of protection.

64. Therefore, as clarified by the Human Rights Committee, reports by States parties

* ‘should indicate in detail the measures that ensure the immediate registration of children born in their territory,’ since the obligation to register children after birth aims, among others, at reducing ‘the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant’[[47]](#footnote-47); and
* ‘should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every field.’[[48]](#footnote-48)

## 2.2. Key elements of the applicable national legislation

65. As a result of the withdrawal of State bodies of Ukraine from NGCA in 2014, residents of these territories now need to cross the contact line to access the State system of registration of civil status acts, including birth certificates.

66. Because of the official position of the Ukrainian authorities on non-recognition of any documents issued in the NGCA, in 2016, Ukraine introduced the judicial procedure of obtaining civil status acts for facts that took place in NGCA.

67. Whereas the judicial procedure designed for issuing birth and death certificates for residents of NGCA has been presented as *simplified*, this approach still raises several legal and practical concerns. Even though courts are tasked to consider cases on establishing facts of birth and death in NGCA *without delay* and to use a *simplified* procedure, the process appears to be lengthy, cumbersome and costly, raising serious legal concerns:

* in contrast to other individuals within the jurisdiction of Ukraine who get the documents through the well-established administrative procedure, residents of NGCA to obtain birth certificates need to use the judicial procedure;
* the process consists of several time- and resource-consuming steps (in practice, before the application to a court, a concerned family needs to submit an application to the registry of civil status acts and get a refusal for registration through the administrative procedure, often in different locations);
* because of the understaffing and significant workload, courts, especially in the areas closer to the contact line where most of residents from NGCA file their applications, are often not able to process the cases of civil status documentation quickly, which forces applicants from NGCA to stay longer or to come back to the GCA again, thus significantly increasing familiesˈ expenses.

68. In addition to the9. *discriminatory* character of the procedure, the above-mentioned practical factors frequently make the registration service based on the court procedure *inaccessible* for many families, especially the most vulnerable ones, leaving a large number of children outside the state system of birth registration,[[49]](#footnote-49) triggering all sorts of associated risks for these children.

69. It is important to recall that under international law the invalidity of any documents issued in the territories over which a territorial State does not exercise its control cannot be extended to such acts as birth or death certificates, the effects of which can be ignored only to the detriment of the inhabitants of the territory.[[50]](#footnote-50)

70. In 2018, there was an attempt of the Parliament to bring the State policy in this regard into compliance with international law standards. The *Law on Reintegration of Donbas* in its Article 2 reiterates the non-recognition approach regarding all acts issued by the *de facto* authorities in NGCA, ‘*except for documents certifying facts of birth or death of a person, which shall supplement an application for the State registration of birth or death of such a person*’ (emphasis added). This clause was expected to remedy the situation and to serve as a legislative ground for re-introducing the administrative procedure of birth registration for residents of NGCA. However, this provision was never enforced, allegedly based on the argument that further amendments to the applicable legislation is needed. Moreover, the *Law on Reintegration of Donbas* also provides for an exemption of court fees in cases related to the establishment of facts of legal significance, such as birth or death certificates. However, in practice, different courts interpret this clause in different ways and, consequently, an exemption from court fees is not systematically granted.

71. Such a cumbersome discriminatory procedure results in a limited access to birth registration by the Ukrainian authorities, which greatly increases the risk of statelessness and prevents children from getting an access to healthcare, education and a possibility to obtain an identity document (a national passport).

# Issues for consideration in the LOI

**72. Combatting discrimination in access to the State system of birth registration and introducing an administrative procedure for concerned individuals**

* Please provide information on measures taken by the competent authorities on removing all existing barriers for (re)-introducing a non-discriminatory accessible administrative procedure for residents of NGCA (what does not exclude employing the court procedure for certain complex cases, as it is generally prescribed by the current legislation of Ukraine).

**73. Enhancing accessibility of the State system of birth registration**

* Please provide information on measures taken by the competent authorities to facilitate access of residents of NGCA to the procedure of birth registration by bringing the relevant services closer to the contact line, for example, by the deployment of mobile teams or mobile units providing the concerned services.
* Please provide information on measures taken by the competent authorities to design a way of how to provide birth certificates issued by Ukraine for residents of NGCA who are not able to cross the contact line (because of financial vulnerability and/or actual or perceived security risks).

1. [International Covenant on Civil and Political Rights](https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx), United Nations General Assembly,16 December 1966, Treaty Series, vol. 999 (**ICCPR**). [↑](#footnote-ref-1)
2. Human Rights Committee, General Comment No. 27: Article 12 (Freedom of Movement), CCPR/C/21/Rev.1/Add.9, adopted at the sixty-seventh session of the Human Rights Committee, 2 November 1999 (**CCPR** [**General Comment No. 27**](https://www.refworld.org/pdfid/45139c394.pdf)**: Article 12 (Freedom of Movement)**), para. 2. [↑](#footnote-ref-2)
3. CCPR [General Comment No. 27](https://www.refworld.org/pdfid/45139c394.pdf): Article 12 (Freedom of Movement), para. 13. [↑](#footnote-ref-3)
4. **United Nations, Economic and Social Council, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, U.N. Doc. E/CN.4/1985/4, Annex (1985)** (**[Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR](http://hrlibrary.umn.edu/instree/siracusaprinciples.html)**), para. 12. [↑](#footnote-ref-4)
5. CCPR [General Comment No. 27](https://www.refworld.org/pdfid/45139c394.pdf): Article 12 (Freedom of Movement), para. 13. [↑](#footnote-ref-5)
6. [Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR](http://hrlibrary.umn.edu/instree/siracusaprinciples.html), para. 18. [↑](#footnote-ref-6)
7. Article 2(3) ICCPR reads as follows:

   Each State Party to the present Covenant undertakes:

   (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

   (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

   (c) To ensure that the competent authorities shall enforce such remedies when granted. [↑](#footnote-ref-7)
8. [Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR](http://hrlibrary.umn.edu/instree/siracusaprinciples.html), para. 15 (emphasis added). [↑](#footnote-ref-8)
9. [*Ibid*.](http://hrlibrary.umn.edu/instree/siracusaprinciples.html), para. 16 (emphasis added). [↑](#footnote-ref-9)
10. [*Ibid*.](http://hrlibrary.umn.edu/instree/siracusaprinciples.html), para. 17 (emphasis added). [↑](#footnote-ref-10)
11. [*Ibid*.](http://hrlibrary.umn.edu/instree/siracusaprinciples.html)., para. 18 (emphasis added). [↑](#footnote-ref-11)
12. CCPR [General Comment No. 27](https://www.refworld.org/pdfid/45139c394.pdf): Article 12 (Freedom of Movement), para. 12. [↑](#footnote-ref-12)
13. [Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR](http://hrlibrary.umn.edu/instree/siracusaprinciples.html), para. 29. [↑](#footnote-ref-13)
14. [*Ibid*.](http://hrlibrary.umn.edu/instree/siracusaprinciples.html), para. 31. [↑](#footnote-ref-14)
15. [*Ibid*.](http://hrlibrary.umn.edu/instree/siracusaprinciples.html), para. 10, [↑](#footnote-ref-15)
16. CCPR [General Comment No. 27](https://www.refworld.org/pdfid/45139c394.pdf): Article 12 (Freedom of Movement), para. 14. [↑](#footnote-ref-16)
17. [*Ibid*.](https://www.refworld.org/pdfid/45139c394.pdf), para. 15. [↑](#footnote-ref-17)
18. [*Ibid*.](https://www.refworld.org/pdfid/45139c394.pdf), para. 15. [↑](#footnote-ref-18)
19. [Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR](http://hrlibrary.umn.edu/instree/siracusaprinciples.html), paras 11, 16. [↑](#footnote-ref-19)
20. [GC on freedom of mvmt](https://www.refworld.org/pdfid/45139c394.pdf), para. 18. The principle of non-discrimination is spelled out in Article 2(1) ICCPR which reads as follows:

    Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. [↑](#footnote-ref-20)
21. ICCPR, Article 17; [CCPR General Comment No. 16: Article 17 (Right to Privacy)](https://www.refworld.org/docid/453883f922.html), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, UN Human Rights Committee, 8 April 1988, paras 6 and 10. [↑](#footnote-ref-21)
22. [International Covenant on Economic, Social and Cultural Rights](https://www.refworld.org/docid/3ae6b36c0.html), UN General Assembly , 16 December 1966, United Nations, Treaty Series, vol. 993, [(**ICESR**)](https://www.refworld.org/docid/3ae6b36c0.html),  Article 12; UN Committee on Economic, Social and Cultural Rights (**CESCR**), [General Comment No. 14: The Right to the Highest Attainable Standard of Health](https://www.refworld.org/docid/4538838d0.html), 11 August 2000, E/C.12/2000/4, para. 43:  the state’s obligation is to ‘ensure the right of access to health facilities, goods and services on a non- discriminatory basis, especially for vulnerable or marginalized groups’ and to ‘refrain from limiting equal access for all persons, including prisoners, to preventive, curative and palliative health services’. [↑](#footnote-ref-22)
23. [ICESCR](https://www.refworld.org/docid/3ae6b36c0.html), Article 9; CESCR, [General Comment No. 19: The right to social security](https://www.refworld.org/docid/47b17b5b39c.html), 4 February 2008, E/C.12/GC/19, para. 44: an obligation of a state ‘to ensure physical access to the social security services and refrain from any practice or activity that denies or limits equal access to adequate social security’. [↑](#footnote-ref-23)
24. [ICESCR](https://www.refworld.org/docid/3ae6b36c0.html), Article 6; CESCR, [General Comment No. 18: The Right to Work](https://www.refworld.org/docid/4415453b4.html), 6 February 2006, E/C.12/GC/18,  para. 6: the right includes ‘the right of access to a system of protection guaranteeing each worker access to employment’. [↑](#footnote-ref-24)
25. *The Constitution of Ukraine*, Law of Ukraine No. 254к/96-ВР, of 28 June 1996, as amended on 30 September 2016 ([UKR](http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/paran4317#n4317)) (the **Constitution of Ukraine**). [↑](#footnote-ref-25)
26. Law of UkraineNo. 1382- IV ‘*On freedom of movement and free choice of residence in Ukraine*’, of 11 December 2003, as amended on 16 April 2017 ([UKR](https://zakon2.rada.gov.ua/laws/show/1382-15/print1387111951919180)). [↑](#footnote-ref-26)
27. The term is cited as it is used in the text of the Law; any use of the terminology employed in the national legislation of Ukraine does not imply any official position of NRC on the qualification of the situation in Donbas. [↑](#footnote-ref-27)
28. Law of Ukraine No. 2268 ‘*On the peculiarities of State policy on ensuring Ukraine’s State sovereignty over temporarily occupied territories in Donetsk and Luhansk regions*’, of 18 January 2018, entered into force on 24 February 2018 ([UKR](https://zakon.rada.gov.ua/laws/show/2268-19)). [↑](#footnote-ref-28)
29. Draft Resolution of the Cabinet of Ministers of Ukraine ‘The order of entry of persons, transfer of goods to the temporarily occupied territories of Ukraine in Donetsk and Luhansk regions and departure of persons and transfer of goods from such territories’, 17 July 2019 (**draft Resolution on crossing the contact line (2019)**) (*the official text of the instrument is not available yet*). [↑](#footnote-ref-29)
30. State Border Guard Service of Ukraine, *Statistics on Crossings: checkpoints of entry-exit (EECP): monthly intersection of the contact line*, July 2019 ([UKR](https://app.powerbi.com/view?r=eyJrIjoiOTU4ODVjYTktNjk3ZC00N2E5LTlkNTQtYzk3ZTYzNzliYjk4IiwidCI6IjdhNTE3MDMzLTE1ZGYtNDQ1MC04ZjMyLWE5ODJmZTBhYTEyNSIsImMiOjh9)). [↑](#footnote-ref-30)
31. Right to Protection, Report ‘[Crossing the contact line: July 2019 Snapshot](https://www.humanitarianresponse.info/en/operations/ukraine/document/r2p-report-crossing-line-contact-july-2019-бф-)’. [↑](#footnote-ref-31)
32. State Border Guard Service of Ukraine, *Statistics on Crossings: checkpoints of entry-exit (EECP): monthly intersection of the contact line* ([UKR](https://app.powerbi.com/view?r=eyJrIjoiOTU4ODVjYTktNjk3ZC00N2E5LTlkNTQtYzk3ZTYzNzliYjk4IiwidCI6IjdhNTE3MDMzLTE1ZGYtNDQ1MC04ZjMyLWE5ODJmZTBhYTEyNSIsImMiOjh9)). [↑](#footnote-ref-32)
33. The most frequent reasons for travels of the conflict-affected population through the contact line include visiting relatives and property, shopping, banking and legal services. // OCHA, [Ukraine Checkpoints – Humanitarian Snapshot](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_humanitarian_snapshot_checkpoints_20190517.pdf), Key Figures, 17 May 2019. The main reasons for IDPs’ travel to the NGCA were visiting and maintaining housing (66%) and visiting friends or family (57%) – International Organization for Migration, [National Monitoring System Report on the Situation of Internally Displaced Persons](http://iom.org.ua/sites/default/files/nms_round_13_eng.pdf), March 2019, p. 36. [↑](#footnote-ref-33)
34. The intensity of the movement and a very high number of individual crossings is explained by the fact that the payment of pension to conflict-affected pensioners from NGCA is linked to a requirement to be registered as an IDP and to regularly undergo various procedures (verification, physical identification *etc*.). This results in regular commuting of a large number of pensioners through the contact line to comply with the formal requirements, in addition to other reasons (family visits, access to services and markets, withdrawal of cash *etc*.).

    The State authorities of Ukraine introduced the regulation of payment of pensions to conflict-affected pensioners, including a number of additional verification / control measures that do not apply to the rest of pensioners within the jurisdiction of Ukraine:

    * (randomly conducted) verifications of the actual place of residence by the social protection departments // Cabinet of Ministers of Ukraine (CMU), Resolution No. 365 ‘*Selected issues on social welfare payments to IDPs*’, of 8 June 2016, as amended on 18 July 2018 ([UKR](http://zakon3.rada.gov.ua/laws/show/365-2016-%D0%BF)).;
    * physical identification of a pensioner in Oschadbank every 6 months // CMU’s Resolution No. 637 ‘*On effecting social payments to IDPs*’, of 5 November 2014, as amended on 18 July 2018 ([UKR](http://zakon0.rada.gov.ua/laws/show/637-2014-%D0%BF));

    requirement not to stay in NGCA for a period of more than 59 consecutive days // Law of Ukraine No. 1706-VII ‘*On ensuring the rights and freedoms of internally displaced persons*’, of 20 October 2014, as amended on 27 March 2018 ([UKR](http://zakon2.rada.gov.ua/laws/show/1706-18)), Article 12. [↑](#footnote-ref-34)
35. The owners of property at NGCA are threatened to face confiscation if [the utility bills are not paid](https://ukr.media/ukrain/259152/) to the de facto authorities in the NGCA or if the residents are registered as IDPs. [↑](#footnote-ref-35)
36. On 16 August 2019, from Stanitsa Luhanska EECP to the wooden pedestrian bridge, connecting GCA and NGCA parts, an electric car was launched ([the official website of Luhansk region state administration](http://loga.gov.ua/oda/press/news/vid_kpvv_u_stanici_luganskiy_do_mostu_pochav_kursuvati_elektromobil_vitaliy)). As of 9 July 2019, reconstruction works at ‘Hnutove’, ‘Novotroitske’, ‘Mariinka’ EECPs were completed; works at ‘Maiorske’ EECP are in progress, [Press center of Donetsk region state administration](https://www.facebook.com/permalink.php?story_fbid=2662183323802695&id=668726333148414). [↑](#footnote-ref-36)
37. Over 80 people per day were losing consciousness at Stanytsia Luhanska EECP alone in early July 2019 // UNHCR/Right to Protection, Report ‘[Crossing the contact line: July 2019 Snapshot](https://www.humanitarianresponse.info/en/operations/ukraine/document/r2p-report-crossing-line-contact-july-2019-бф-)’. [↑](#footnote-ref-37)
38. Office of the United Nations High Commissioner for Human Rights, [Report on the human rights situation in Ukraine 16 February to 15 May 2019](https://reliefweb.int/sites/reliefweb.int/files/resources/New%20UN%20Human%20Rights%20Report%20on%20Ukraine_Full%20text_ENG.pdf), para. 40: ‘*During the reporting period, at least nine civilians (eight men and one woman) died from health complications while crossing the EECPs in both directions.*’ [↑](#footnote-ref-38)
39. Draft Resolution on crossing the contact line (2019), para. 16. [↑](#footnote-ref-39)
40. *Ibid*., para. 16. [↑](#footnote-ref-40)
41. *Ibid*, para. 8. [↑](#footnote-ref-41)
42. Temporary procedure for the control of the movement of persons along the contact line within Donetsk and Luhansk regions, adopted by the Order of the First Deputy of the antiterrorist operation on the territory of Donetsk and Luhansk Oblast, 14 April 2017 ([UKR](https://zakon.rada.gov.ua/rada/show/v222_950-17/ed20170414)). [↑](#footnote-ref-42)
43. Draft Resolution on crossing the contact line (2019). [↑](#footnote-ref-43)
44. [Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR](http://hrlibrary.umn.edu/instree/siracusaprinciples.html), paras 8 and 18. [↑](#footnote-ref-44)
45. CCPR, [General Comment No. 17: Article 24 (Rights of the child)](https://www.refworld.org/pdfid/45139b464.pdf), adopted at the thirty-fifth session of the Human Rights Committee, on 7 April 1989, para. 2. [↑](#footnote-ref-45)
46. [*Ibid*.](https://www.refworld.org/pdfid/45139b464.pdf), para. 7. [↑](#footnote-ref-46)
47. [*Ibid*.](https://www.refworld.org/pdfid/45139b464.pdf), para. 7. [↑](#footnote-ref-47)
48. [*Ibid*.](https://www.refworld.org/pdfid/45139b464.pdf), para. 5. [↑](#footnote-ref-48)
49. In the areas of Donetsk and Luhansk regions which are currently not under the control of the Ukrainian authorities, an estimated 56% of children born do not have birth certificates issued by the Government of Ukraine. UN, [Briefing Note on Birth Registration](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/briefing_note_birth_registration_en.pdf), February 2019. [↑](#footnote-ref-49)
50. International Court of Justice, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, 21 June 1971. [↑](#footnote-ref-50)