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PERSONS
IN SERBIA:
HOW TO ACCESS
THE RIGHT TO A
DIGNIFIED LIFE?



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### IMPRESSUM

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POSSIBILITIES FOR IMPROVING
THE POSITION OF INTERNALLY
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THROUGH THE PRISM OF THE
UN GUIDING PRINCIPLES ON
INTERNAL DISPLACEMENT

The year 2018 is marking the 20th anniversary of the adoption of the UN Guiding Principles on Internal Displacement – the document that provides a general platform for protection of rights and assistance to internally displaced persons (hereinafter: IDP) in the course of displacement as well as during the resettlement and reintegration. Developed on the occasion of the anniversary, the Plan of Action for Advancing Prevention, Protection and Solutions for Internally Displaced People 2018-2020 was published in April this year. The Plan was prepared within the mandate and under the patronage of the UN Special Rapporteur on the Human Rights of IDPs, and upon detailed consultations with stakeholders and experts addressing the IDPs position.

Almost the same period of time has passed since the conflict in Kosovo and the first wave of displacement into Serbia. According to the data provided by the Commissariat for Refugees and Migration, 199,584

http://www.globalprotectioncluster.org/\_assets/files/20180523-gp20-plan-of-action-final.pdf

internally displaced persons currently reside in Serbia, while it is estimated that about 68,500 vulnerable internally displaced persons still have needs caused by such displacement. The Republic of Serbia has not yet provided permanent solutions for the most vulnerable groups that would enable them full exercising of the guaranteed rights. In spite of the numerous implemented strategic and project support measures aimed at the improvement of the position of IDPs including amendments to regulations of significance for access to rights as well as adoption of the already second National Strategy for Solution of Problems of Refugees and Internally Displaced Persons, all available data and analyses indicate that a large number of internally displaced persons still face problems exercising their human rights.

### INTERNALLY DISPLACED PERSONS IN SERBIA: 2

- It is estimated that 16,644 IDPs households i.e. 68,514 people still have needs caused by displacement;
- 14.9% of internally displaced persons are Roma people, where the average number of household members is 7.1;
- 14% of internally displaced persons failed to complete elementary education;
- Almost one third of internally diplaced persons are entirely unemployed.
- Over 73% of households have a monthly income of less than than EUR 300, while the average monthly income per household amounts to EUR 169;
- Approximately 80% of Roma IDP households live have a monthly income of less than RSD 20,000 per month;
- 5,1% of the total number of in accommodation not intended for residential living;
- over 90% of Roma IDP live in facilities lacking elementary living conditions.

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<sup>2</sup> The data presented according to the report Conditions and needs of internally displaced persons, Commissariat for Refugees and Migration of the Republic of Serbia, May 2018. Available at: http://www.kirs.gov.rs/docs/izvestaji/Stanje%20i%20potrebe%20IRL%202018%20-%20SR.pdf

The objective of this document is to present the most important remaining problems of internally displaced persons in Serbia through the framework of the Plan of Action for Advancing Prevention, Protection and Solutions for Internally Displaced People 2018-2020 and – through recommendations for improved access to rights – draw the attention to the necessity that the state and other interested stakeholders continue to seek permanent solutions for internally displaced persons with commitment and focus. The Plan of Action centres around four priority areas of significance for the position of internally displaced persons. Those areas are:

- Participation;
- National policies and legislature;
- Data and analyses on internal displacement;
- Addressing protracted displacement and facilitating durable solutions.

The experience that the A 11 - Initiative for Economic and Social Rights possesses in regard to the provision of free legal aid, supplemented by analyses of policies, position and available data on internally displaced persons, indicates that all four aforementioned areas are also relevant to the assessment of the position of internally displaced persons in Serbia.

## **PARTICIPATION**

The participation principle, as one of the basic democratic principles, has been integrated into the Guiding Principles on Internal Displacement. Mechanisms and processes for consultations and participation in decision-making regarding their lives and in particular solutions offered to them, are of key importance for sustainability of such solutions. In addition, it has been clearly recognised that receiving communities represent a significant factor of support and success for the displaced persons and that therefore they should be inevitably included in planning. Particular attention should be directed at the adequate inclusion of particularly vulnerable and marginalised groups of internally displaced persons such as minority groups, women, children and others in processes that are of interest to them.

Regarding the position of internally displaced persons in Serbia, inclusion into processes of policies' formulation, decision-making and in particular – creation and provision of permanent solutions – still remains one of the challenges, but also a key factor in the sustainability of the solution. The current situation indicates that the number and influence of civil society organisations dealing with problems of internally displaced persons is in decline, while local self-governments – although involved to a large extent in the processes of solution finding for IDPs – oftentimes fail to implement the planning and adoption processes of local policies in a transparent and genuinely participative manner.

Examples of problems the internally displaced persons face especially in the area of exercising of their rights to adequate housing and discrimination protection, confirm the need for improvement of decision-making processes. Some of the most obvious and repeated problems are related to inadequate consultation processes during resettlement of

informal settlements, including the ones populated with a large number of IDPs; defining of conditions required for use of social apartments based on decisions of local self-governments without inclusion of users as such; and creation of support programmes based on project requirements where the persons who do not meet the conditions – and in particular the most vulnerable ones – are excluded from the process. Also, the process of adoption of local decisions which regulate the access to certain rights and donations, due to lack of transparency and absence of public debates that would ensure the IDPs participation, often results in discrimination.

#### **RECOMMENDATIONS**

- Include the internally displaced persons into planning and implementation of solutions offered to them which comprises guarantees for the process of consultations and obtaining of adequate and timely information in all aspects regarding the offered solutions;
- Offer support and strengthen IDP organisations to get involved to a higher extent in processes of significance for provision of permanent solutions including monitoring of local policies intended for improvement of internally displaced persons' position;
- Improve the knowledge and raise capacities of local self-government units regarding the rights and specific needs of internally displaced persons as well as regarding the measures aimed at attaining equality i.e. prohibition of discrimination;
- Provide equal conditions and fair treatment for all internally displaced persons in social housing allocation procedures and strive towards permanent housing solutions.

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# AND LEGISLATURE

In the absence of specific regulations relating exclusively to the rights of internally displaced persons, the general legal framework remains relevant for the manner of approach to and exercising of the rights, supplemented by strategies and policies addressing specifically internally displaced persons. In accordance with the Guiding Principles on Internal Displacement, internally displaced persons shall fully enjoy the same rights and freedoms pursuant to international and domestic laws as all other individuals in their country. There will be no discrimination of internally displaced persons in exercising of any of the rights and freedoms stemming from their displacement.<sup>3</sup>

Available analyses and experience in provision of free legal aid confirm that internally displaced persons still face numerous problems in access to their rights. In spite of significant shifts in the domain of status rights, IDPs still face problems in the process of residence registration at addresses of social welfare centres or during registration of new members in the families of beneficiaries of social apartments or apartments intended for their social housing. Possession of personal documents and the possibility to register residence still represent a necessary precondition for access to other guaranteed rights. Availability of most social protection services is directly related to permanent and temporary residence. This means that to persons who cannot register their permanent or temporary residence, services of social welfare centres may become available only in cases of

<sup>3</sup> Guiding Principles on Internal Displacement, Principle 1

urgent interventions. Considering the high rate of poverty, limiting provisions of regulations in the area of social protection affect the possibilities of IDPs integration to a large extent. The obligation to file a law suit against relatives who are obliged to provide support, time-limited social assistance and the discretionary right to calculate missed earninigs, discrimination of users of financial social assistance and application of the Decree on Measures of Social Inclusion of Beneficiaries of Cash Social Assistance, as well as irregular and illegitimate application of regulations represent only some of the generally identified problems. Exercising of the right to adequate housing is also burdened by problems. Particularly important are issues related to the taxation of social housing and housing of internally displaced persons<sup>4</sup>, the quarantee of security of the housing status and numerous irregularities in the application of the regulation relevant to the eviction of residents of informal settlements populated by a large number of Roma IDPs. Availability of durable housing solutions for the most vulnerable internally displaced persons additionally impedes the realisation of this right.

Along with problems regarding the exercise of certain rights, the absence of a functional system of legal aid has been additionally impeding the position of internally displaced persons and limiting their access to justice. Numerous critiques of the Draft Law on Free Aid, who primarily address its insufficient inclusivity, represent the first signal that the most vulnerable internally displaced persons will have problems in exercising the right to access to justice as soon as the Law becomes applicable.

In the context of the situation of internally displaced persons in Serbia, local integration and thus the solution of the IDP issue, remains conditioned by the advancement of access to socio-economic rights through, on the one side, the improvement of the legal framework and removal of administrative obstacles for access to rights, and on the other side, through the creation of such policies and support programmes that would be based on the respect of human rights and interdependence of human rights.

4 For more information, please see A 11 – Initiative for Economic and Social Rights 'Initiative A 11 filed a constitutional appeal because of discrimination of refugees in the tax procedure' available at: http://www.a11initiative.org/the-a11-initiative-for-economic-and-social-right-filed-a-constitutional-appeal-because-of-the-discrimination-of-refugees-in-the-tax-procedure/

The main precondition for the improved access to socio-economic rights relates to the possibility of additional protection for all socio-economic rights for all categories of citizens, that would be provided by:

• The ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

# SPECIFIC RECOMMENDATIONS ARE RELATED TO EXERCISING OF INDIVIDUAL RIGHTS:

- Ensure correct and consistent application of the Law on Permanent and Temporary Residence regarding the registration of permanent residence at the address of the social welfare centre;
- Abolish the obligation of filing law suits for support as a condition for exercising the right to financial social assistance;
- Abolish the limitation stipulating that individuals with working ability are eligible for financial social assistance in duration of up to nine months in a calendar year;
- Repeal the Decree on Measures of Social Inclusion of Beneficiaries of Financial Social Assistance;
- Provide and ensure the correct application of the Law on Housing and Maintenance of Apartment Buildings and timely inform the interested parties on new solutions and procedures stipulated by the said Law;
- Abolish the tax on social housing and housing of internally displaced persons.

# AT THE LEVEL OF POLICY COORDINATION OF SIGNIFICANCE FOR THE POSITION OF IDPS, THE FOLLOWING IS REQUIRED:

- Improve the cooperation between the Commissariat for Refugees and Migration and institutional mechanisms intended for improvement of the position of internally displaced persons with sectorial ministries and mechanisms addressing Roma inclusion;
- Improve the cooperation of local trustees for refugees and migrations with mobile teams for Roma inclusion where these mechanisms have been established.

# DATA AND ANALYSES ON INTERNAL DISPLACEMENT

Existence, periodical upgrading and publishing of disaggregated data on internally displaced persons along with analyses of needs and problems, represent a precondition for the design and implementation of adjusted and efficient measures aimed at the improvement of their position.

Although there are data and special reports in Serbia regarding internally displaced persons, it is nonetheless necessary to point out that they are not numerous and that they were mostly generated within the programmes and activities independently implemented or supported by the UN High Commissariat for Refugees (UNHCR). As the leading institution in the area of migrations and thus protection of internally displaced persons, the Commissariat for Refugees and Migration also collects and discloses relevant data within its activities. Unfortunately, due to methodological and other limitations, the collected and disclosed data sometimes are not comparable or are not easily comparable with the statistical data about the majority population. The possibility to compare and increase data comparability are recognized as global challenges, while work on improving data availability is one of the priorities. Reports on the application of the Strategy for Resolving Problems of Refugees and Internally Displaced Persons are not currently available nor has the action plan for its application been adopted.

Monitoring reports of non-governmental organisations on the access to rights and obstacles internally displaced persons face are even more scarce. In addition, data on problems in exercising of rights are presented in regular annual reports of the Ombudsperson and the Commissioner for the Protection of Equality. Unfortunately, the previous reports of these institutions are highly general and based on the scarce number of complaints internally displaced persons submitted with these independent bodies. For example, the Ombudsperson's report for the year 2017 only states that in spite of this institions' recommendations aimed at undertaking relevant measures and care for Roma IDPs who live in informal settlements without any infrastructure, their position still remains exquisitely unfavourable. A separate annual report of the Commissioner for the Protection of Equality does not say anything about the particular situation of IDPs except in one statement wherein it is mentioned that one complaint was filed to this institution in 2017.

Without efficient and systematic monitoring of the effects of the implemented measures, it is entirely certain that progress towards achieving durable solutions will not be adequately assessed, while future policies will not take into account the current problems in the integration of internally displaced persons.

### **RECOMMENDATIONS**

- Improve the system for data collection on internally displaced persons and provide higher comparability particularly in comparison to the general population;
- Prepare separate monitoring reports on the position of internally displaced persons by National Human Rights Institutions;
- Prepare and publish a report on the implementation of the Strategy for Resolving Problems of Refugees and Internally Displaced Persons.

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<sup>5</sup> The last published report was run by a non-governmental organisation Praxis 'Position of internally displaced persons – brief analysis of remaining challenges', available at: http://www.praxis.org.rs/index.php/en/reports-documents/praxis-reports/item/851-position-of-internally-displaced-persons-%E2%80%93-a-brief-analysis-of-remaining-challenges December 2014

## **DURABLE SOLUTIONS**

The greatest challenge in resolving internal displacement issues, both globally and in Serbia, is to achieve sustainable durable solutions, which are most often realized slowly and remain unattainable for a long period of time. Long-term displacement inevitably enhances marginalisation, inequality, poverty and vulnerability of internally displaced persons. Such situations along with long-lasting marginalisation of large groups prevent sustainable development of the country as a whole.

In the previous period, Serbia has undertaken a series of measures and activities aimed at the reception of and care for internally diplaced persons. The strategic determination of Serbia to consider a possibility of return and local integration as options for durable solutions is in accordance with the main principles of protection of internally displaced persons. However, the number of people who decided to return is extremely low, while the rate of interest for return keeps declining on a year-to-year basis.

On the other hand, considering that a long time has passed since displacement, there is a feeling that the internally displaced persons have already obtained aid and assistance and that their needs should have been adequately satisfied, and that the problem will be considered solved upon the closure of collective centers. However, the identified problems which internally displaced persons who left collective centers face, as well as the fact that the most vulnerable ones, especially Roma IDPs who live in informal settlements, have so far not received adequate assistance and support, justifies the fears regarding the quality of life of the individuals who were provided housing solutions. All of the above emphasises the need for the implementation and publication of an analysis of the effects of the so far undertaken measures. One of the key problems is that the assistance and support so far have been disproportionally provided to the owners of apartments or houses.<sup>6</sup>

6 Richard Allen, 'Support for IDPs in Serbia: Summary Report and Proposals', available at: <a href="http://www.unhcr.rs/media/docs/Support\_for\_IDPs\_in\_Serbia\_ENG\_S-01-IZMENE-01-11-2016.pdf">http://www.unhcr.rs/media/docs/Support\_for\_IDPs\_in\_Serbia\_ENG\_S-01-IZMENE-01-11-2016.pdf</a>> July 2016

Also, it is important to point out that due to difference in capacities and resources of donors and supporters of projects, there were frequent discrepancies in quality and services which was - together with the absence of coordination - recognised and acknowledged in the report of the Special Rapporteur on adequate housing as one of the obstacles for exercising of IDPs rights to adequate housing. Finally, one of the key problems reflects in the fact that models of social housing are actually not available to IDP households which live solely on social assistance or minimum pension. Examples from practice indicate that there are more and more IDPs who live under constant risk from forced eviction. In a statement following her visit to Serbia, the Special Rapporteur on adequate housing clearly identifies the problem and invites the authorities to 'guarantee a cheap social housing, among other things through the increase of housing subventions or establishment of other mechanisms aimed at control of rental prices and public utilities' costs in order to prevent situations where people cannot afford food, medications or other basic needs because they need to pay housing expenses'.

Considering all the indicated problems as well as the discrimination of the particularly endangered and poor, it is clear that changes of conditions in this area will not occur without changes in the approach to problem solving.

#### IN THAT SENSE, IT IS NECESSARY TO:

- Prepare a sustainable durable housing programme modeled after the Regional Housing Programme;
- Ensure that problems internally displaced persons face become visible;
- Besides access to housing programmes, ensure unobstructed access to other economic and social rights to internally displaced persons;
- Connect the policies and programmes directed at the improvement of the position of internally displaced persons with national development strategies, and in particular with the ones aimed at the implementation of the UN Sustainable Development Goals and programmes for the implementation of policies focused on improvement of position of Roma;
- Collect, analyse and publish innovative and efficient models for achieving durable solutions.



