



## LEGAL ALERT

October, 2017

### 1. Law on Local Government in NGCA is Extended by 12 months, with a Provision for Possibility of UN Peace Keeping Mission

The law 'On Creation of Necessary Conditions for Peaceful Settlement of the Situation in the certain areas of Donetsk and Luhansk Regions'<sup>1</sup> has come into force. The Law **prolongs validity period of the Law of Ukraine #1680-VIII<sup>2</sup>** on the same matter by one year. The prior law was designed for 3 years in 2014 and had already expired earlier in September 2017.

The Law is seen as one of the crucial and contentious condition precedents within the Minsk II Package of Arrangements. However, due to the Law the implementation of its provisions is **made conditioned** on successful holding of local elections which in turn is conditioned on attainment of complete ceasefire.

#### Salient Features of the Law

Political Elements	Economic and Financial Elements
<ul style="list-style-type: none"> <li>- <b>Early elections of local municipal authorities</b> – to be held in accordance with the Constitution of Ukraine and under international supervision. Elected officials cannot be early dismissed.</li> </ul>	<ul style="list-style-type: none"> <li>- <b>Special social-economic state program</b> for development of the region shall be introduced. It shall focus on the restoration of industrial, transport, and social infrastructure.</li> </ul>
<ul style="list-style-type: none"> <li>- <b>'People's Police Squads'</b> are to be formed by the local municipal authorities. They will be responsible for the protection of public order and subordinated directly to the respective local mayors.</li> </ul>	<ul style="list-style-type: none"> <li>- The program shall be funded by a state budget annually.</li> </ul>
<ul style="list-style-type: none"> <li>- Local municipal authorities shall be involved in the <b>appointment</b> of officials of the <b>judicial and prosecutor's</b> offices.</li> </ul>	<ul style="list-style-type: none"> <li>- The program will be assigned by the Cabinet, and its budget cannot be reduced subsequently.</li> </ul>

Creation of conditions for a **deployment of the United Nations Peacekeeping Operation** is listed in the preamble among the reasons for the enactment of the Law. The preamble also emphasizes on:

- the State's commitment to peaceful settlement of the conflict on the basis of principles and provisions of international law and the Charter of the United Nations
- appreciation towards the international communities for upholding Ukraine's sovereign integrity

<sup>1</sup> Law of Ukraine No. 2167-VIII 'On Creation of Necessary Conditions for Peaceful Settlement of the Situation in the certain areas of Donetsk and Luhansk Regions' dated 6<sup>th</sup> of October, 2017 - <http://zakon2.rada.gov.ua/laws/show/2167-19>

<sup>2</sup> Law of Ukraine No. 1680-VII 'On Special Order of Local Government in Certain Areas of Donetsk and Luhansk Regions' dated 16<sup>th</sup> of September, 2014 - <http://zakon0.rada.gov.ua/laws/show/1680-18>

## 2. Presidential Draft Law, with Significant Bearing on the Status of NGCA, has Passed the 1<sup>st</sup> Parliamentary Hearing

On October 6, 2017 the Parliament has adopted in the first hearing a Draft Law 'On the Peculiarities of a State Policy on Ensuring Ukrainian State Sovereignty over the Temporary Occupied Territories in Donetsk and Luhansk Regions'<sup>3</sup>. The Draft Law was submitted to the Parliament by the President and marked as urgent.

The Draft Law **still needs to go through a second Hearing**, or more Committee reviews if appropriate. However, given the strong backing of the President, there is a possibility of fast track enactment of the law. Following are the salient features of the Draft Law.

- Certain areas of Donetsk and Luhansk regions are **declared as 'temporarily occupied territories'**
- Russian Federation is recognized as an **'aggressor state'**
- The so called 'DNR' and 'LNR' are recognized as **'Russian occupation administration'**
- Ukraine exonerates responsibilities in the 'temporarily occupied territories' for actions committed by 'Russian armed forces and occupation administration'
- Ukraine State protection shall be based on provision of humanitarian aid, maintaining access to national legal remedies, ensuring socio-economic needs of its citizens, and maintenance of cultural tiles and access to Ukrainian media
- Rules for entry-exit and movement of goods will be defined by the Armed Forces in agreement with State Security Service and the Ministry for ToT and IDPs
- Parliamentary Commissioner on Human Rights is entrusted with the task of monitoring situation relating to constitutional rights and freedoms
- Cabinet of Ministers shall document facts of rights violations and consolidate legal claims against Russian Federation

The initial version of the Draft submitted by the President had a **provision for prioritizing enforcement of the Minsk II Arrangements**. The provision **was excluded** from the Draft Law after a heated debate in the Parliament.

The Draft Law **develops legislation on Military Administrations (MAs)**, prescribing repeal of the current law on Civil-Military Administrations (CMAs) in case MAs are introduced. MAs will enjoy all the powers over the local governments which the Civil-Military Administrations is currently exercising under the 2015 law on CMAs and additional special powers.

The Draft Law introduces a **few radical provisions with regards to the use of Armed Forces** which are not foreseen in the Constitution or otherwise regulated by existing law. Following are outlines of the provisions:

- The Armed Forces of Ukraine **can be used in a peacetime** (without the imposition of a martial law) for the implementation of national security and defence measures, and 'repulse of Russian armed aggression'. The wordings materially correspond with grounds, mentioned in the Constitution as well as the Law of Ukraine on Martial Law Legal Order, under which Martial Law can be imposed. As such, the Draft Law **blurs the difference between peacetime and martial law period** with regards to use of Armed Forces.
- Through the passing of the law, the Parliament will be deemed to have provided **blanket approval to the President for the use of Armed Forces**. This contrasts both the Constitutional provision for promulgation of Martial Law and Law of Ukraine 'On the Rules of Parliamentary Procedure of Ukraine', which requires the President to issue a Martial Law Decree first – and then the Parliament to approve the Decree within two days.

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<sup>3</sup> Draft Law 'On the Peculiarities of a State Policy on Ensuring Ukrainian State Sovereignty over the Temporary Occupied Territories in Donetsk and Luhansk Regions' - [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62638](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62638)

### 3. Draft IDP Integration & Durable Solutions Strategy is Set for Public Discussion

The Ministry of Temporary Occupied Territories and IDPs has released a Draft Durable Solutions Strategy<sup>4</sup> (2017-2020) and invited written comments from the humanitarian community. The Draft document has set the following strategic principles:

- adherence to human rights and fundamental freedoms
- political equality and non-discrimination of IDPs
- participation of IDPs in the development and execution of state and regional policy
- involvement of all the interested actors including national and local authorities, humanitarian and development partners

#### Salient Features of the Strategy:

Housing	Property Rights Protection
<ul style="list-style-type: none"> <li>– prioritization of IDPs claim for social and temporary housing through legislative amendment</li> <li>– rental tax deduction or exemption from rental tax for landlords who provide housing for IDPs</li> </ul>	<ul style="list-style-type: none"> <li>– introduction of independent, transparent, and non-discriminatory procedure for documenting property rights, particularly by introducing special register for property destroyed/damaged as a result of the “Russian military aggression”, development of long-lasting compensation program</li> <li>– development of legislation on evaluation of pecuniary and moral damages and compensations</li> </ul>
Pensions	Labour Market Competition
<ul style="list-style-type: none"> <li>– simplification of processes of pension registration, proof of right to pension and proof of its size</li> </ul>	<ul style="list-style-type: none"> <li>– introduction of tax privileges for employers and enterprises hiring IDPs</li> <li>– introduction of financial and credit mechanisms for IDPs willing to start business</li> <li>– provision of professional retraining and advanced trainings for IDPs</li> </ul>
Education	Healthcare
<ul style="list-style-type: none"> <li>– education grants for IDP children</li> <li>– additional state quotas for IDPs within higher education institutions</li> <li>– preferential long-term loans for education</li> <li>– free accommodations in dormitories</li> </ul>	<ul style="list-style-type: none"> <li>– introducing a program on recovery of documents confirming certain preferential healthcare status</li> <li>– simplification of healthcare procedures for IDPs</li> </ul>

The Draft Strategy evokes the following **measures for host communities**:

- State budget funding for host communities
- running information campaigns representing positive IDP integration experiences
- development of psychological and social aid systems

<sup>4</sup> Draft Strategy for Integration of IDPs and Durable Solutions to Internal Displacement for the period until 2020 - <http://mtot.gov.ua/wp-content/uploads/11-10-17-STRATEGY%60YA-poslednyaya-versy%60ya.doc>

#### 4. Ukraine has ratified Protocols No. 15 and 16 to the European Convention on Human Rights (ECHR)

The President has signed a Law<sup>5</sup> ratifying Protocols No. 15 and 16 to the ECHR . As a result,

- a term for filing a claim to the European Court of Human Rights (ECtHR) is reduced from 6 months to 4 months since all national remedies are used
- the **Supreme Court of Ukraine may request** the ECtHR for non-binding **advisory opinion** on interpretation or application of human rights and fundamental freedoms
- Council of Europe Commissioner for Human Rights has a right to take part in any judicial hearing and submit written comments

#### 5. Indications of Possible Change in Legal Framework for Government's Response to the Conflict

Legislative and executive actions in the last couple of months indicate a possible change in the legal framework for government's response to the conflict. In September (see DRC Legal Alert September 2017<sup>6</sup>) the President has enacted a Decree on the 'Concept of Reforming and Further Development of State Governance System in a State of Emergency or in a Special Period'. The Decree envisages mechanisms for coordination of public institutions in the event of proclamation of State of Emergency or under a 'Special Period'. According to the Law on Defence of Ukraine, 'Special Period' is defined as a 'period starting with mobilization or imposition of martial law'. In October (see Section 2) a Draft Law backed by the President, containing significant provisions on Military Administrations, has passed the first Parliamentary hearing.

It is pertinent to mention that the current legal framework used by the government in the conflict response does not allow the government to derogate from any of the constitutional rights of the conflict affected people.

*Some terminologies used in this issue of the Alert are taken from the draft laws or current legislation and do not necessarily reflect the position of DRC.*

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<sup>5</sup> Law of Ukraine No. 2156-VIII 'On Ratification of Protocols No. 15 and No. 16 to the European Convention on Human Rights' dated 5<sup>th</sup> of October, 2017 – <http://zakon3.rada.gov.ua/laws/show/2156-viii>

<sup>6</sup> Danish Refugee Council, Legal Alert Issue for September, 2017 – <https://www.humanitarianresponse.info/en/operations/ukraine/document/ukraine-legal-alert-drc-september-2017-юридичний-інформаційний-булетень>