

# Legislative Update

UNHCR update on displacement-related legislation | December 2018

## Adopted Legislation

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## Draft Legislation

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## Adopted legislation

### Suspension of the Ukraine-Russian Federation Friendship Treaty

On 3 December 2018, the Parliament adopted its Law #0206<sup>2</sup> suspending the validity of the Treaty on friendship, cooperation and partnership between Ukraine and the Russian Federation (Ukraine-Russian Federation Friendship Treaty).

By this law, Ukraine declares its intention to suspend as of 1 April 2019 further application of the Ukraine-Russian Federation Friendship Treaty in accordance with the Vienna Convention on the Law of Treaties. The obligations undertaken by Ukraine under this Treaty before its suspension remain valid. Any implications for conflict-affected population are not obvious, since the Treaty focused on inter-state relations and reinforced existing international law principles related to friendly relations among states. The decision not to prolong the Treaty is not expected to have direct effect on individuals.

<sup>1</sup> Law 2268 is the Law of Ukraine On particular aspects of public policy aimed at safeguarding state sovereignty of Ukraine over the temporarily occupied territory of Donetsk and Luhansk regions. The text in Ukrainian is available here: <http://zakon0.rada.gov.ua/laws/show/2268-viii>

<sup>2</sup> The full text available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=65044](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65044)

### Law on the adjacent zone of Ukraine

On 6 December, the Parliament adopted its Law #2641-VIII<sup>3</sup> defining the adjacent zone of Ukraine according to the 1982 UN Convention on the Law of the Sea (UNCLOS), which shall constitute “no more than twenty four nautical miles”. The concrete limits of the adjacent zones shall be negotiated and agreed with bordering states.

The law specifies the limits of the adjacent zone in the Azov and Black seas, as well as Ukraine’s rights as a coastal state, including legitimate security measures. The law provides the State Border Guard Service with additional functions in the sea, including stopping vessels, arresting vessels and conveying them to ports, as well as searching vessels in the adjacent zone.

### Law on mine action in Ukraine

On 6 December, the Parliament adopted its Law on mine action in Ukraine<sup>4</sup>. The adoption of this text is a significant step forward in ensuring safety and security of people residing in weapon-contaminated areas along the contact line. The establishment of a normative framework for the clear, effective and timely demining activities shall also contribute towards the fulfilment of Ukraine’s obligations under International Humanitarian Law (IHL).

The adopted law contains key definitions of mine action as the complex of measures aimed at diminishing unexploded ordnances (UXOs) influence on affected population (including land clearance and mine risk education (MRE)); UXOs (non-exhaustive list) and victims (including their family members and groups of victims). It delineates the specificities of military, humanitarian and operational demining. The law also refers to the necessity to consider international mine action standards (IMAS) and develop national mine action standards (NMAS) in Ukraine.

Furthermore, the Law on mine action defines the following procedures:

- Accreditation of mine action operators<sup>5</sup> to be performed by a special Commission on accreditation and monitoring;
- Assistance to victims – medical, psychological, professional and social<sup>6</sup>;
- Democratic civil control to be executed by the Parliament, the Government, executive and local self-government bodies, court and civil society organizations.

The following bodies are entrusted with functions in mine action:

State body	Key functions
<b>Parliament</b>	<ul style="list-style-type: none"> <li>■ Defines and amends (if necessary) the legal framework on mine action;</li> <li>■ Defines a 5-years National Mine Action Programme (the Programme) drafted by the National Mine Action Authority (NMAA);</li> <li>■ Dedicates a specific session during which the Government will report on the implementation of the Programme</li> </ul>
<b>Government</b>	<ul style="list-style-type: none"> <li>■ Implements the public policy on mine action;</li> <li>■ Creates the NMAA;</li> </ul>

<sup>3</sup> The full text available online (in Ukrainian): <http://zakon.rada.gov.ua/laws/show/2641-viii>

<sup>4</sup> The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/2642-viii> The law was signed by the President on 22 January 2019 and entered into force on 25 January 2019.

<sup>5</sup> As mine action operations are not specified it may be presumed that the defined procedure would also cover foreign mine action operators

<sup>6</sup> Financial sources for providing assistance are not specified – it may be assumed that they would include both state budget and external stakeholders funds

	<ul style="list-style-type: none"> <li>■ Establishes the Mine Action Center (MAC) and the Commission on accreditation and monitoring;</li> <li>■ Ensures civil control over the NMAA, the MAC and other executive mine action organs;</li> <li>■ Defines the order of accreditation and monitoring<sup>7</sup> to be implemented by the Commission on accreditation and monitoring</li> </ul>
<b>National Mine Action Authority (NMAA) – interagency body</b>	<ul style="list-style-type: none"> <li>■ Newly established central executive authority</li> <li>■ Coordinates all mine-action related measures with all relevant central and local authorities, companies and individuals, as well as carries out international cooperation (with donors and international mine-action operators)</li> <li>■ Controls the MAC and the Commission on accreditation and monitoring;</li> <li>■ Approves national standards for demining, as well as decisions of the Commission on accreditation and monitoring; identifies operating procedures for identification, disposal and utilization of explosive objects</li> </ul>
<b>Commission on accreditation and monitoring</b>	<ul style="list-style-type: none"> <li>■ Constitutes an integral part of the NMAA and functions under the supervision of the Head thereof;</li> <li>■ Fulfills accreditation procedure and adopts preliminary decisions on issuing of license;</li> <li>■ Controls working spaces, equipment, documentation and staff qualification of mine action operators</li> </ul>
<b>Mine Action Centre (MAC)</b>	<ul style="list-style-type: none"> <li>■ Central executive body (either existing or newly established<sup>8</sup>);</li> <li>■ Coordinates mine action operations and conducts quality control over their implementation;</li> <li>■ Develops annual Mine Action Plans on demining;</li> <li>■ Reports to the NMAA</li> </ul>
<b>Local authorities</b>	<ul style="list-style-type: none"> <li>■ Contribute to MRE activities;</li> <li>■ Contribute to medical assistance to victims;</li> <li>■ Assist mine action actors in their activities;</li> <li>■ Agree plans of demining activities in their respective areas of responsibility;</li> <li>■ Inform local residents about contaminated areas and available protection measures</li> </ul>

The law on mine action is expected to unify all efforts on clearance of contaminated territories, various assistance to victims and MRE performed by national and international actors, as well as to bring Ukrainian thematic legal framework in line with IHL rules and world best practices.

The timeframe indicated in the law envisages a 3 months' term for acquiring operational capacity. Considering the scope of the activities, its implementation may take longer and require additional budgetary and/or donor funds.

Certain risks are identified in the provisions related to donor funding, but they require additional careful analysis and will be presented in the next Legislative update.

<sup>7</sup> The Government has to adopt respective decisions within 3 months since the date when the Law would be published

<sup>8</sup> The Government has to adopt respective decision within 3 months since the date when the Law would be published

### State targeted program on support to ATO and JFO participants

On 5 December, the Government adopted its Resolution #1021<sup>9</sup>, approving the State targeted program on support to participants in Anti-Terrorist Operation (ATO) and Joint Forces Operation (JFO). The support package includes assistance in physical, medical, and psychological rehabilitation, as well as in social and professional adaptation. Planned until 2022, the Program envisages the development of an administrative scheme by adopting thematic legislation, capacity building of the concerned state bodies and integrating best practices at central and local levels.

In case of proper application, the needs of the Program's participants will be fulfilled as assessed by the state bodies concerned and reflected in adequate policies. This initiative may also contribute to conflict prevention and social cohesion.

### Subvention to the local budgets in the East

On 5 December, the Government adopted its Regulation #929-p<sup>10</sup> dividing the subvention from the State budget between the local budgets in the east of Ukraine to support territories affected by the armed conflict. The Ministry for Temporarily Occupied Territories and Internally Displaced Persons (the MinTOT) is responsible for consenting the mentioned division with the Parliamentary Budgetary Committee.

This is the third<sup>11</sup> subvention to conflict-affected territories covering several settlements of Donetsk oblast (Mariupol and Volnovakha rayon) and Dnipropetrovsk oblast (Kryvyi Rih). The total allocated sum is 8327,283 thousand UAH.

The granting of the subvention contributes to the overall development of the mentioned localities (e.g., as it was already the case in 2017, for housing issues and administrative services). Such financial contributions to the local budgets may prevent social tensions and facilitate the integration of internally displaced persons (IDP) into host communities.

### Reallocation of the Ministry of Social Policy budget costs

On 12 December, the Government adopted its Regulation #971-p<sup>12</sup> on transfer of funds between different budget lines assigned to the Ministry of Social Policy.

In particular, the adopted amendments reduce expenditures for:

- targeted assistance for housing and utilities for IDPs (by 157 128 thousands UAH);
- subvention on compensation for housing to displaced ATO participants with disabilities (third group) in Volyn, Dnipropetrovsk, Kyrovohrad and Poltava oblasts (by 122,2 thousand UAH);

and increase expenditures for:

- subvention on compensation for housing to displaced ATO participants with disabilities (third group) in Vynnytsya, Donetsk, Zakarpattya, Ivano-Frankivsk, Odesa, Sumy and Khmelnytsky oblasts (by 7 139,6 thousand UAH).

<sup>9</sup> The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-derzhavnoyi-cilovoyi-programi-z-fizichnoyi-medichnoyi-psihologichnoyi-reabilitaciyi-i-socialnoyi-ta-profesijnoyi-readaptaciyi-uchasnikiv-antiteroristichnoyi-operaciy>

<sup>10</sup> The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-rozpodil-u-2018-roci-subvenciyi-z-derzhavnogo-byudzhetu-miscevim-byudzhetam-na-zdijsnennya-zahodiv-shchodo-pidtrimki-teritorij-shcho-zaznali-negativnogo-vplivu-vnaslidok-7773>

<sup>11</sup> Please see more details in UNHCR July and November Legislative Updates

<sup>12</sup> The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-pererozpocialnoyi-politiki-na-2018-rik>

### Creation of the Inter-agency Commission on preparing the consolidated claim to the Russian Federation

On 12 December, the Government adopted its Resolution #1059<sup>13</sup> creating the Inter-agency Commission on preparing the consolidated claim to the Russian Federation. The Commission would:

- develop the legal position of Ukraine on cutting off and containing the armed aggression of the Russian Federation;
- elaborate amendments to thematic legislation, in particular the Law on safeguarding sovereignty over the non-government controlled areas of the Donetsk and Luhansk oblasts (Law #2268)<sup>14</sup>;
- submit its proposals and recommendations to the Government.

The results of the work of the Commission will contribute towards identification of further Ukraine's position. However, the adopted Resolution provides no details regarding mechanism of submitting prepared consolidated claim and does not identify any international body to which the claim will be submitted.

### Crimea informational reintegration strategy

On 27 December, the Government approved the information Strategy on reintegration of the Autonomous Republic of the Crimea and the city of Sevastopol (the "Crimea informational reintegration strategy").<sup>15</sup>

The main purpose of the document is to extend information related support to Crimea,<sup>16</sup> as well as to contribute to the human rights protection and restoring of territorial integrity. For effective implementation, the Strategy requires an action plan and respective budgetary allocations.

### Adoption of State Budget 2019

Adopted on 23 November, the State Budget 2019 (Law #2629-VIII) entered into force on 1 January 2019.<sup>17</sup> Major expenses related to UNHCR's operation are reflected below (in thousand UAH):

Public body / budget program	2017	2018 (in general)	2019
<i>Ministry for Temporarily Occupied Territories and Internally Displaced Persons of Ukraine</i>	28 149,4	193 883, 5	195 186,9
<i>Expenses under coordination of the MinTOT:</i>			
Subvention from the state budget to local budgets to support the areas affected by armed conflict in Eastern Ukraine	17 000,0	34 000,0	34 000,0
Mine risk education			5 000,0
Subventions to local budgets for measures on realization of the project "Housing for IDPs"			10 000,0
<i>Ministry of Social Policy of Ukraine</i>	151 989 115,2	150 137 180,8	198 634 180,1
<i>Expenses under coordination of the MoSP:</i>			
Monthly targeted assistance to IDPs	3 263 665,0	3 211 758,6	3 042 568,6

<sup>13</sup> The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-utvorennnya-mziyi-ukrayini-do-rosijskoyi-federaciyi-shchodo-realizaciyi-yiyi-mizhnarodno-pravovoyi-vidpovidalnosti-za-zbrojnu-agresiyu-proti-ukrayini>

<sup>14</sup> Please see more details in UNHCR February Legislative Update

<sup>15</sup> The summary available online: <https://mip.gov.ua/news/2889.html?fbclid=IwAR1ABWV5qO2ef0n4jiqu-tuVF4ehFKPUwjiPE6cDtyfTyHBHw404LOUIAOU>

<sup>16</sup> The terminology "Temporarily occupied territories" is quoted from the official legal act and does not reflect UNHCR position

<sup>17</sup> The full text available online (in Ukrainian): <http://zakon.rada.gov.ua/laws/show/2629-viii>

Financing experimental employment of members of low-income families and internally displaced persons	20 000,0	20 000,0	-
Financial support of measures in creating workplaces for infrastructure renewing and development in Donetsk oblast	-	80 000,0	-
Subventions to local budgets for housing for displaced ATO/JFO participants with disabilities			25 000,0
Financing measures to protect children, families, women from the most vulnerable categories of population			95,570.3
Financing subsidies for housing/dwelling and communal services			20,000,000.0
Financing of accommodation of Formerly Deported People (Crimean Tatars)			45,340.0
<i>Ministry of Education and Science of Ukraine</i>	32 577 228,6	31 787 239,7	73 043 039,7
<i>Ministry of Health of Ukraine</i>	16 208 096,1	26 543 770,0	39 350 075,6
<i>Ministry of Justice of Ukraine</i>	9 094 510,3	12 692 763,2	13 867 143,8
<i>Expenses under the coordination of the MoJ:</i>			
Free Legal Aid Coordination Center	408 744,9	529 326,4	728 287,3
Financing services and expenses of advocates of FLA			337 733,2
<i>Ministry of Regional Development, Construction and Public Utilities of Ukraine</i>	1 736 146,7	3 777 340,4	12 467 499,5
<i>Expenses under the coordination of the Ministry of Regional Development</i>			
Subvention from the state budget to local budgets for the implementation of cross-border cooperation projects	-	-	10 000,0
Subvention from the state budget to local budgets for the formation of the infrastructure of the united territorial communities			2 100 000,0
Subvention from the state budget to local budgets for implementation of projects under the Extraordinary Financing Program of Restoring Ukraine (nationwide expenditures)	2 145 000,0	1 500 000,0	1 550 000,0
State Fund for Regional Development	3 500 000,0	6 000 000,0	7 670 000,0
<i>Ministry of Defence of Ukraine</i>	68 819 627,0	86 582 200,0	102 489 246,5
<i>State Emergency Service</i>	8 157 502,4	11 234 000,0	13 462 695,9
<i>State Migration Service</i>	2 006 225,0	2 873 929,1	4 376 162,0
Contribution to IOM membership fees			1 517,2
Administration of the <i>State Border Guard Service</i>	7 923 204,7	9 343 800,0	10 806 309,4
<i>State Security Service</i>			9 658 674,6
<i>Office of the Ombudsperson</i>			164 887,9
Financing National Prevention Mechanism (of tortures) by the Office of the Ombudsperson			2 595,0
Donetsk oblast state administration			472 027,5

Luhansk oblast state administration			384 234
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It should be noted that the State Budget does not allocate separate funds for the implementation of the Action Plan to the IDP Integration and Durable Solutions Strategy, as well as for the payment of pension-related debts accumulated due to the suspension of payment of pension to registered IDPs.

## Draft legislation

### Bringing criminal legislation in line with international humanitarian and criminal law

On 20 December, the Parliament registered the draft law #9438<sup>18</sup> introducing international crimes – genocide, crimes against humanity, war crimes and aggression<sup>19</sup> – to the Criminal Code of Ukraine. This is a step towards aligning Ukrainian legislation with the Statute of the International Criminal Court and enhancement of criminal proceedings in the area of persecution of serious conflict-related IHL violations. This initiative may contribute towards the protection of the civilian victims of hostilities.

### Temporary housing for IDPs

On 13 December, the MinTOT published for a public discussion a draft Order on creating temporary housing fund for IDPs (the Order)<sup>20</sup>.

The draft initiative suggests authorizing local self-government bodies/military-civil administrations to create separate stock of temporary housing specifically for IDPs. The draft order defines:

- eligibility criteria;
- application and selection process;
- scoring system for prioritisation of claims.

Special locally established housing commissions would consider applications, as well as issue preliminary decisions on the provision of housing to IDPs. Housing would remain the applicants' property in the case when the circumstances that led to displacement do not change. Although the draft may contribute to the establishment of the normative framework for IDP housing solutions, proper funding would be needed for the housing stock enhancement, including from external donors.

## Other Important Developments

### UN General Assembly Resolutions on Crimea

On 5 December 2018, UN General Assembly adopted its Resolution<sup>21</sup> *Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov*. Recalling its previous Resolutions,<sup>22</sup> it condemns the ongoing temporary occupation of the

<sup>18</sup> The full text available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=65266](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65266)

<sup>19</sup> The list of international crimes is reflected in Articles 6-8 of Rome Statute of the International Criminal Court available online: [https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf)

<sup>20</sup> The full text available online (in Ukrainian): <https://mtot.gov.ua/ua/ministerstvo-z-pitan-timchasovo-okupovanih-teritori-ta-vnutrishno-peremischnih-osib-ukraiini-povidomljae-pro-provedennja-gromadskih-publichnih-obgovoren-proektu-porjadku-formuvannja-fondiv-jitla-dlja-timchasovogo-projivannja-vnutrishno-peremischnih-osib-ta-porjadku-bezoplatnogo-nadannja-i-koristuvannja-jitlovimi-primischennjami-z-fondiv-jitla-dlja-timchasovogo-projivannja-vnutrishno-peremischnih-osib-dali-proekt-porjadku>

<sup>21</sup> The full text available online: <https://undocs.org/A/73/L.47>

<sup>22</sup> Cf. Resolution 68/262 of 27 March 2014 on the territorial integrity of Ukraine, in which it affirmed its commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders, Resolutions 71/205 and 72/190 on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, of 19 December 2016 and 19 December 2017

Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation, and reaffirms the non-recognition of its annexation. The General Assembly supports the commitment by Ukraine to adhere to international law in its efforts to put an end to the temporary Russian occupation of Crimea.

Another UN General Assembly Resolution<sup>23</sup> on the *Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine* was adopted on 22 December 2018. The UN General Assembly supports the efforts of Ukraine to maintain economic, financial, political, social, informational, cultural and other ties with its citizens in the occupied Crimea in order to facilitate their access to democratic processes, economic opportunities and objective information. It calls upon all international organizations and specialized agencies of the United Nations system, when referring to Crimea in their official documents, communications and publications, including with regard to statistical data of the Russian Federation, to refer to “the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation”, and encourages all States and other international organizations to do the same.

### [Supreme Court decision regarding the discriminatory nature of several points of the Government Resolutions #365 and #637](#)

On 20 December 2018, the Supreme Court of Ukraine considering in the third instance<sup>24</sup> the discriminatory nature of points 7, 8, 9, and 13 of the Government Resolution #365 and paragraphs 6, 7, 8 of Government Resolution #637 supported the previous statements of lower-instance courts.<sup>25</sup> The Supreme Court confirmed that the disputed pieces of legislation create additional obstacles and barriers for IDPs willing to receive their pensions and social benefits in comparison with other categories of citizens of Ukraine. In particular, those requirements create a new basis for the termination of pensions which is not envisaged by the Law on Pensions, as well as violate the principles of equality and freedom of movement as defined in the Constitution of Ukraine. Even though positive, the decision does not effectively change the current normative framework and requires actions from the side of the Cabinet of Ministers of Ukraine. On the positive note, for IDPs, verifications are prohibited as a necessary requirement for the assignment of pensions and/or social benefits, but would remain in the cases of reinstatement of the suspended payments.

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## LINKS

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<sup>23</sup> The full text available online: <https://undocs.org/A/C.3/73/L.48> To the moment, only draft Resolution is available

<sup>24</sup> The full text available online (in Ukrainian):

<http://www.reyestr.court.gov.ua/Review/78808062?fbclid=IwAR3AZIQZLqLjC9ccOWyOGYS4YSg6x7aunDYjVC3bTPzMaNU4pXI4dAem4u4>

<sup>25</sup> Please see more details in UNHCR July Legislative Update