



**LEGAL ALERT**  
**Supplementary Issue**  
**Issue 33 – November 2018**

**Ukraine Declares Martial Law**

In the evening of Monday 26 November, 2018 Ukrainian Parliament [ratified](#) a Presidential Special Decree on Promulgation of Martial Law in 10 out of 24 regions of Ukraine. Earlier that day the President of Ukraine initiated the Martial Law motion at the Council of National Security and Defence of Ukraine, as required under the Constitution of Ukraine, and secured approval of the Council. Following Council approval, the President submitted the Martial Law Decree to the Parliament for ratification. As a result of Parliament ratifying the Presidential Decree, Martial Law enters into force for a 30 day period effective from 14:00, 26 November 2018.

**Facts Contributing to the Development:** According to media reports, on 25 November 2018 three Ukrainian navy ships were hit, disabled, and captured by Russian coastguards while transiting from the Black Sea port of Odessa to Mariupol in the Sea of Azov via the Kerch Strait. The Kerch Strait separates the Kerch Peninsula of Crimea in the west from the Taman Peninsula of Russia in the east. It provides the only waterway access between the Black Sea and Azov Sea. Russia accused the Ukrainian ships of illegally entering its territorial waters, while Ukraine cited a 2003 Russia-Ukraine [treaty](#) 'On cooperation in using of Azov Sea and Kerch Strait' that recognises Kerch Strait and Azov Sea as territorial waters of both the states and sets unimpeded access to the Kerch Strait.

**A. Salient Features of the Decree**

i) While the initial version of the Decree provided for a nation-wide Martial Law, the Parliament revised it to be limited to 10 out of 24 regions of Ukraine, namely: Chernihiv, Sumy, Poltava, Kharkiv, Donetsk, and Luhansk regions bordering Russia on the East and Mykolayiv, Kherson, and Odessa & Vinnitsya regions bordering the 'Transnistria' area. The Martial Law also covers Ukrainian territorial waters within Azov and Black Seas



- ii) Martial Law is effective from 14:00 on 26 November, 2018 for 30 days and will end 26 December, 2018
- iii) [Law](#) of Ukraine 'On legal regime of Martial Law' is the governing law for the military administrations to exercise executive powers jointly with the Ministry of Interior and other executive branches
- iv) Cabinet is required to enforce a plan on ensuring Martial Law measures
- v) Cabinet is required to allocate all required resources to the armed forces
- vi) Certain constitutional rights (elaborated in the next section) can be limited
- vii) Regional state administrations and local councils are to establish defence councils and support military management
- viii) Ministry of Foreign Affairs is to inform the UN and foreign missions on the facts contained in the Martial Law proclamation and temporary derogation of rights under the International Covenant on Civil and Political Rights

## B. Analysis: The New Legal Regime (Martial Law)

- i) **Martial Law Period:** The Martial Law period is 30 days. Unless it is extended, the civilian government is set to be restored on 26 December, 2018. In case of an extension, the National Security and Defence Council, the President, and the Parliament will be required to repeat the same processes that were followed for the initial promulgation of the Decree.
- ii) **Derogations of Constitutional Rights:** Ukrainian Constitution allows a number of rights to be derogated under the Martial Law. The table below lists constitutional rights limited under the current Presidential Martial Law Decree (on the left) and constitutional rights which could have been limited by the Decree, but were not, thus remaining fully in force (on the right):

Constitutional Rights which have been limited under the Decree	Constitutional Rights which could have been limited under the Decree but remained fully in force
<ul style="list-style-type: none"> <li>• Article 30 – Right to inviolability of his or her dwelling place</li> <li>• Article 31 – Privacy of calls and correspondence</li> <li>• Article 32 – Right to personal privacy</li> <li>• Article 33 – Freedom of movement</li> <li>• Article 34 – Freedom of speech</li> <li>• Article 38 – Right to participate in local and national elections</li> <li>• Article 39 – Freedom of assembly</li> <li>• Article 41 – Right to property</li> <li>• Article 42 – Freedom of Entrepreneurship</li> <li>• Article 43 – Right to work and prohibition of forced labour</li> <li>• Article 44 – Right to strike</li> <li>• Article 53 – Right to education</li> </ul>	<ul style="list-style-type: none"> <li>• Article 35 – Freedom of religion</li> <li>• Article 36 – Freedom of political and civic action</li> <li>• Article 46 – Right to social protection (includes pension)</li> <li>• Article 48 – Right to a decent standard of living</li> <li>• Article 49 – Right to healthcare</li> <li>• Article 50 – Right to safe environment</li> </ul>

- iii) **Functioning of the Central Government:** Though compositions of the legislative and executive organs remain the same, the President will enjoy a central role in the general management and execution of the measures of Martial Law as the Supreme Commander of the armed forces of Ukraine. While the National Security and Defence Council is entitled to prepare plans for the execution of Martial Law activities, the Cabinet will bear the responsibility of enforcing the plans.
- iv) **Establishment of Military Administrations:** Military administrations are interim state bodies which *can be* created to overtake state administration functions by replacing existing civilian administration. Military administrations are created not by default but through Presidential Decree on a request from either the military command or respective regional state administration. They can be created both at regional level or even at village or town levels. The President will appoint a head of the military administration on the recommendation of the General Staff of the armed forces or the relevant regional state administration.
- v) **Functioning of the Local Councils:** Local councils including village, town, city, and regional councils can operate in two different forms. The mandatory form, as specifically dictated in the Presidential Decree on Martial Law, is the establishment of defense councils, which are bodies responsible for local enforcement and coordination of measures taken under the Martial Law. The second form takes place when local state administration or local council is replaced by a military administration. In this case, the military administration will overtake the local council roles and functions in addition to their special powers (see listed below in ‘Potential Implications on Conflict Affected Persons’).
- vi) **Elections:** No elections will take place under the Martial Law. As the Martial Law is imposed for a 30 day period until 26 December 2018, it will not impact the upcoming Presidential (31 March, 2019) nor the Parliamentary (27 October, 2019) elections unless it is extended. Elected bodies including the Parliament and the President, as well as local state administrations will continue to function even if their normal tenure expires during the concurrence of Martial Law.

## C. Potential Implications on Conflict Affected Persons' Rights and Humanitarian Activities

- i. **Common Implications:** The limitation of rights means that some of the government acts, which would otherwise be considered as violation of rights, will be considered lawful. This will be applicable to all individuals and entities. The following are some examples of activities which are now made possible under the Martial Law:

<p style="text-align: center;"><b>With Regards to Right to property</b></p>	<p style="text-align: center;"><b>With Regards to Freedom of Movement</b></p>
<ul style="list-style-type: none"> <li>● Use production capacity of enterprises and their work forces on grounds of national security</li> <li>● Conduct personal searches, searches of vehicles and cargoes, premises &amp; housing</li> <li>● Confiscate computers, video, and audio equipment and other equipment (including data servers) regardless of the ownership</li> <li>● Impose an obligatory duty on individuals to share their housing with military personnel, officers of law-enforcement agencies, and evacuated individuals</li> <li>● Forcibly appropriate private and communal properties on payment of compensation</li> </ul>	<ul style="list-style-type: none"> <li>● Impose curfew</li> <li>● Impose special entry-exit procedures for movement of persons &amp; goods</li> <li>● Impose restrictions on freedom to choose place of residence or abode</li> <li>● Prohibition to change place of abode without approval of a local military mobilisation unit – for those individuals who are subject to conscription</li> <li>● Evacuation of individuals from certain areas</li> </ul>
<p style="text-align: center;"><b>With Regards to Personal Freedom</b></p>	<p style="text-align: center;"><b>With Regards to prohibition of censorship and Freedom of Assembly</b></p>
<ul style="list-style-type: none"> <li>● Mobilisation is possible – though it is not currently announced</li> <li>● Introduce an obligatory labour duty to ensure needs of the armed forces, law-enforcement agencies, and functioning of national economy (still must meet requirements on minimum salary, recreation, and maximum working time limit)</li> <li>● Conduct personal ID verifications and administrative arrests in case of failure to pass the verification</li> </ul>	<ul style="list-style-type: none"> <li>● Regulate operations of TV, printed, radio, and other medias, publishers and other cultural institutions; limit informational traffic</li> <li>● Ban demonstrations and other peaceful assemblies</li> </ul>

- ii. **Derogation of Rights vice versa International Human Rights Standards:** The derogation of rights by the Martial Law Decree does not necessarily mean automatic application of powers such as imposition of curfew or mobilisation of people by the military administration. It connotes state's authority to exercise those powers when necessary. The international Human Rights standards for implementation of such power during a derogation period are governed by the relevant provisions of the International Covenant on Civil and Political Rights and the European Convention on Human Rights. Accordingly, the state needs to apply the principles of *proportionality* and *necessity* while exercising these powers.

- iii. **Regarding Mobilisation:** As mentioned previously, mobilisation of Ukrainian citizens is possible, though not yet announced. A National Security and Defence Council Decision instructed the General Staff of the armed forces and the Ministry of Defence to update the mobilisation plan and organise training of the first mobilisation reserve. The first mobilisation phase includes reserve of military units, mostly 'ATO'-veterans. Currently the first mobilisation queue is reported to include approximately 130, 000 military personnel

- iv. Implications for the IDPs:** IDPs, like any other persons, will face the common limitations mentioned above if they are enforced. However, promisingly, certain rights of IDPs, crucial under the current circumstances, remain unaffected by the Presidential Decree. As mentioned in Section B, there are six rights which the constitution permits to limit during a Martial Law which are not limited by the current Martial Law Decree. Out of the six rights, three are crucial for IDPs, i.e., the right to social protection (Art. 46), the right to a decent standard of living (Art 48), and the right to healthcare (Article 49)
- v. Implications for Humanitarian Actors:** Humanitarian actors may be exposed to additional limitations due to their mandates and operating principles. The humanitarian principles of neutrality and independence will be at increased risk of being compromised where the civil administration is replaced by a military one. In the event any humanitarian worker is drafted to the military, the organisation will face a conundrum. Under Ukrainian labour code they will not be permitted to terminate the employment contract of the drafted staff. On the other hand, humanitarian operating principles do not allow employment of staff actively participating in military service. In addition, due to the distinctiveness of humanitarian programmes that rely heavily on frequent movement of staff, humanitarian organisations are likely to be disproportionately affected by any restriction on movement of persons and goods and imposition of curfews

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

*This document is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of Danish Refugee Council and do not necessarily reflect the views of the USAID or the United States Government.*

*This document covers humanitarian aid activities implemented with the financial assistance of the European Union. The views expressed herein should not be taken, in any way, to reflect the official opinion of the European Union, and the European Commission is not responsible for any use that may be made of the information it contains.*

*This document has been funded by UK aid from the UK government; however the views expressed do not necessarily reflect the UK government's official policies.*