

Comments of the Svyatogorsk group on the draft Law of Ukraine “on the state policy of the transition period”

We are a group of people living on both sides of the contact line affected by the armed conflict in eastern Ukraine. By working together, we seek to find what unites us, to convey the voice of the victims of conflict in order to draw attention to important peacemaking issues.

The Svyatogorsk group is composed of 14 participants living on both sides of the contact line. Among us there are internally displaced persons (IDPs), an ATO veteran, a deputy of a local council in the government-controlled areas (GCA), students from non-government controlled areas (NGCA), and representatives of humanitarian and human rights organisations working with the consequences of the armed conflict in eastern Ukraine.

Since 2018, we have worked together on projects that address transitional justice and reconciliation. In the framework of the first projects, we conducted 84 in-depth interviews with people on both sides of the contact line about their fears, their vision for ending the conflict and post-conflict justice. We have also gathered the life stories of the victims of the conflict, who have lost loved ones, their health, their homes and their families. The publication of the results of these projects is available on the [website](#) of our group.

The development of approaches, concepts and draft laws related to transitional justice in Ukraine, as well as the heightened sensitivity of the subject in public discourse, have led us to believe that it is necessary to understand what the residents of the Donetsk and Luhansk regions on both sides of the contact line understand under fair justice in the context of the Donbas conflict. It is the personal experience of a past conflict that points to the meanings, points of pain, expectations and fears of people in matters of fair justice and truth-seeking. To this end, in June-September 2020, we conducted 100 in-depth interviews in the Luhansk and Donetsk regions on both sides of the contact line.

The introduction of a draft law initiated by the Ministry for the Reintegration of the Temporarily Occupied Territories of Ukraine “On the state policy of the transition period” was further confirmation of the relevance of the work we have done. Based on the discussions in our group and the preliminary findings of the 2020 study on transitional justice, we prepared a commentary by our group on the draft law.

1. The terms used in the draft law are ambiguous and require clarification

Some of the terms used in the draft law require clarification, as they are not enshrined in the Ukrainian legislation.

- The draft uses the term “temporary occupation by the Russian Federation” but does not qualify the conflict under international law as “international armed conflict between Ukraine and the Russian Federation”.
- There is no explanation of the term “effective general control” in the context of Ukraine, Donetsk and Luhansk regions (Art.4 para.3).
- The establishment of a transitional period of 25 years is not justified. There is no list of conditions that could shorten or extend the period specified in the draft law (Art. 8 para.9).

The participants of the group from the non-controlled territories of Ukraine (NGCA) in Donetsk and Luhansk regions noted that the text of the draft law was not easily understood by those who were not in Ukrainian information space. It is difficult to crystallise key messages from the text to the residents of the NGCA, so their assessment may be more emotional than rational. In drafting such normative acts of

Ukraine, it is necessary to prepare a short version of such documents for residents of Donetsk and Luhansk regions on both sides of the contact line and other regions of Ukraine with key messages and signals.

2. How will unsettled legal issues be addressed?

- The draft law does not contain non-judicial mechanisms for restoration of property rights, which have been lost as a result of continuous absence of Ukraine's legal framework in the NGCA of Donetsk and Luhansk regions.
- The procedure for the re-establishment of the courts (Chapter 9) raises questions, as well as the establishment of a reserve of civil servants who will work in the "de-occupied" territories (Art. 45).

Recommendation: Provide IDPs from "de-occupied" localities priority access to the pool of civil servants (that is, that they be prioritised relative to residents from other regions of Ukraine outside Donetsk and Luhansk regions).

- What were the criteria and principles for defining "priority development territories" in the Donetsk and Luhansk regions, where a "special investment regime" is being introduced for a period of 25 years? (Art. 39) Some of these areas in GCA suffered minimal damage as a result of the fighting. What law regulates the establishment of a "special investment regime"?

3. Addressing the consequences of the armed conflict

Responsibility for offences committed during the "temporary occupation" (Arts. 17, 23)

- The main flaw in the current version of the draft law is that it does not contain a precise and unambiguous wording that would signal to the residents of the NGCA who did not take part in the armed conflict that they will not be brought to justice, that their rights will not differ from those of the residents from other regions of Ukraine and any attempt at discrimination will be suppressed by the relevant state institutions.
- What remained of the group's interviews conducted in 2020 was the feeling that people living in the NGCA were deeply disappointed with the state of affairs to date. Moreover, this includes both Russia's supporters - who believe that they have been betrayed by the Russian authorities - as well as citizens who feel patriotic towards Ukraine - who believe that they have been betrayed by the Ukrainian authorities. The majority of people on both sides of the contact line talk about manipulations of the top political leadership of the Russian Federation, so-called republics and Ukraine, who for their own interests compel destructive ideas and false goals to people.
- For almost all those interviewed, the punishment of perpetrators of criminal offences related to the conduct of hostilities is a prerequisite for real, rather than formal, peace in eastern Ukraine. Also, many people would like to see officials and military commanders of the highest and middle ranks punished, at a minimum suspended from their posts.

Amnesty (Art. 17, 23)

- Article 17, paragraph 1 of the draft law states that persons who have committed crimes falling within the jurisdiction of the International Criminal Court (ICC) shall not be exempted from criminal responsibility or pardoned, nor may such persons be amnestied.
- In practice, however, it will be difficult to prove that a crime falls within the jurisdiction of the ICC. Thus, this provision will only be relevant for a small number of crimes whose investigation will make it possible to establish with certainty that they do fall within the jurisdiction of the ICC.

- While Article 23 deals with basic approaches to establishing responsibility for violations committed during temporary occupation, such important issues must be specified. The same article mentions a draft law which is to/will be drafted and contains an expanded list of cases in which persons cannot be exempted from criminal responsibility, pardoned or amnestied. Thus, without the elaboration and adoption of an additional draft law, the issue of prosecution and exemption from liability is not definitively settled.
- The draft law also fails to reflect the situation of the accountability and exemption from accountability (amnesty) of the participants in the armed conflict on Ukraine's side (volunteer battalions, the Armed Forces of Ukraine) for law violations proven as per Ukrainian law.

Lustration

- The procedure for the composition of the lustration commission is unclear, including the lack of an explanation of how the "impeccable reputation, high moral character, public standing" of the members of the commission will be determined (Art. 24, para. 6).
- Article 24, paragraph 5, states that persons in the occupational administrations of the Russian Federation who have provided for the life of temporarily occupied territories and have not caused harm to the life or health of citizens shall not be subjected to lustration. At the same time, the list of professions/activities that are referred to in this definition is not given.

Compensation

- The draft law does not contain information on the payment of material compensation by Ukraine to citizens whose property in NGCA has been damaged as a result of the shelling by the Ukrainian army.
- The group's 2020 research showed that the majority of respondents felt that compensation was needed for victims and those who suffered from the armed conflict in Donbas. Although material/financial support will not make up for the loss of loved ones, it will provide some relief and hope for a return to normal life. Some respondents noted that, regardless of the extent of the damage, compensation should be paid to all those living in the NGCA and GCA near the contact line during the conflict.
- Many respondents suggested that, first of all, an international court should identify the party to be at fault in the conflict and order it to pay reparations. Some respondents considered that the Russian Federation should be recognised as an aggressor country in relation to Ukraine and, accordingly, should pay compensation. At the same time, the State of Ukraine must not forget its citizens, on both sides of the contact line.
- Some respondents expressed the view that the State of Ukraine should ensure the payment of compensation as a party to an armed conflict in which territory it is taking place. At the same time, Ukraine should receive the support of international organisations and countries that are guarantors of Ukraine's security.

Measures to prevent the recurrence of the armed conflict

- Article 80 does not reflect the goal of national dialogue, as "expanding the range of participants involved in overcoming the consequences of the military aggression of the Russian Federation" should be only one of the tasks of such a dialogue.
- Measures to ensure information sovereignty and to overcome the effects of propaganda also need to be clarified (Arts. 35, 37).
- In the group's 2020 study, the majority of respondents (83 out of 100) expressed the view that people affected by the armed conflict would be able to live in peace in the future. This is the opinion

of the respondents on both sides of the contact line. In reflecting on the topic of possible reconciliation, the most common comment made by the participants in the study was that it would take time to build sustainable peace. Importantly, a large proportion of respondents emphasised that peace was possible if sensitive issues were not manipulated and horizontal communication (between people on both sides of the contact line) was established. Communication is particularly important for young people (18-28 years old).

- With regard to building a peaceful future, most respondents emphasised the need to jointly address economic and social problems, as well as to create a secure information space, which would be based on zero tolerance to attempts to incite hatred. It was manipulation and propaganda, according to many respondents, that triggered the conflict and continue to fuel hatred among people.

In general, the draft law could be a good starting point for the development of a public discussion on the topic of transitional justice. At the same time, its adoption by the Verkhovna Rada of Ukraine is advisable, after making changes based on the analysis and processing of the feedback received from civil society and experts, taking into account the views of people living on both sides of the contact line.