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The rule of law for the protection of the environment

CIVIC SPACE FOR PARTICIPATION IN CLIMATE POLICIES IN UKRAINE

IN TIMES OF WAR



Imprint

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1 Summary

In 2020, the authors of this update published a report on civic space for participation in climate policy in Ukraine, which notes that CSOs have increased their presence in public discourse and policy-making and have become a strong driving force behind ongoing reforms following the Granite Revolution in 1990, the Orange Revolution in 2004 and the Revolution of Dignity in 2013/2014. The report provides a detailed description of the legal framework, institutional structures and capacity of civil society to advocate for the decarbonisation of society. As we were preparing the update of this study, the full-scale invasion of Russia to Ukraine interfered and the baseline for environmental and climate change engagement in Ukraine has changed drastically. Updating the assessment with the indicators used in the 2020 study cannot reflect the challenges faced by CSOs in Ukraine and is therefore not comparable with the results of 2020 and contexts of other countries. Therefore, the team decided to use the update for an overview of the environmental damage caused by the war, the changed legal framework due to martial law and challenges of activism in wartime and for green recovery.

After the first shock wore off, activities of Ukrainian civil society organisations and private engagement have multiplied. Primarily engagement is focussed on humanitarian purposes to deal with the consequence of the brutal aggression of course, but other causes of activism such as environmental and climate protection have been upheld and have been noticeable beyond the borders of Ukraine. Joint campaigns of the movement have helped to put the narrative of energy independence and sovereignty on the political Agenda and are shaping the debate on a green recovery for Ukraine. NGOs take citizen science approaches to monitor the damages of the war, pool information and run websites with the aim of creating transparency about the environmental impact of war and preparing for a full environmental recovery of Ukraine.

The start of the war against Ukraine in 2022 resulted in significant and comprehensible restrictions on the right of access to environmental information and public participation, based on the arguments of defence and national security. Many electronic databases and registers containing public information were closed to the public. The Parliament also decided to limit the scope of the Environmental Impact Assessment and the Strategic Environmental Assessment, thus limiting public consultation. Martial law became the basis for numerous legislative amendments, some of which undermine full compliance with the provisions of the Aarhus Convention. At the same time, there have been legislative attempts to approximate EU legislation, as foreseen in the Association Agreement, in the field of air protection, waste management and the Pollutant Release and Transfer Register etc. This resulted in the introduction of new provisions on public participation and access to information. Hopefully, after the end of martial law, new provisions will enter into force, new mechanisms for access to information will be (re)launched and public consultations will be resumed.

2 Introduction

As party to the Paris Agreement, Ukraine has committed itself to take ambitious action to keep the global average temperature rise below 2°C above pre-industrial levels. With the ratification of the Aarhus Convention in 2000, it has also agreed to follow high standards of citizen participation in climate and environmental matters. A study published in 2020 tried to draw a realistic picture of the situation of civil society participation within Ukrainian climate policies. Based on this status quo analysis, barriers to meaningful, effective and long-term civil society participation in Ukraine were identified and recommendations developed on how to overcome them (Donges et al. 2020).¹

The 2020 edition of the study identified hostilities and ongoing war on Ukrainian territory as barriers to civic engagement and climate action. With the full-scale war since February 2022 the situation has dramatically changed. In particular, if we look at stability and peace as the first indicator under the criterion “Fundamental Requirements” in the “Participation Handprint” (Figure 1) outlined in the study, we see that the initial situation for participation, but also the priorities and commitment of the government have of course changed since Russia invaded Ukraine in February 2022.²



Figure 1: The Participation Handprint

The ambition for an update of this study was that it could qualitatively describe the real challenges of NGOs in war times. Therefore it is not built on the previous methodology capturing civic space with a set of standard indicators, but describes the new challenges: the environmental damages, changes of access to information and public participation due to martial law and the procedural provisions Ukraine prepares for a Recovery after the active conflict.

3 Methodology

The analysis of the status quo of civic space during war times was based on the research team's local knowledge, contacts and experience in the country. It included a literature review, analysis of relevant legislation and policy documents, as well as interviews with local experts and stakeholders.

¹ https://www.ufu.de/wp-content/uploads/2020/11/Study_CivicSpaceForParticipationInClimatePolicies_final_seperate_online.pdf, last accessed: 13.09.2023.

² For more information on the methodology see: https://www.ufu.de/wp-content/uploads/2020/11/Study_CivicSpaceForParticipationInClimatePolicies_final_seperate_online.pdf



³ https://edgar.jrc.ec.europa.eu/report_2022, last accessed 28.11.2023

⁴ <https://www.worldometers.info/world-population/ukraine-population>, last accessed: 28.11.2023.

⁵ Ibid.

⁶ https://data.un.org/CountryProfile.aspx/_Docs/CountryProfile.aspx?crName=Ukraine, last accessed: 28.11.2023.

⁷ <https://en.ecoaction.org.ua/warmap.html>, last accessed: 16.10.2023.

5 Environmental consequences of the war in Ukraine

In February 2022 Russia started a full scale invasion on Ukrainian territory. Ukraine has since been suffering an unprecedented scale of the impact of Russian aggression. Russia is destroying homes and infrastructure, killing people, shelling fields and forests, occupied part of Ukraine’s territory already since 2014. From the very beginning of the full-scale war, the issue of the war’s impact on the environment has also been raised. It has become clear that when the war ends, the negative impact on the environment will be felt for years and decades to come. International studies show that wars since the First World War have increasingly affected ecosystems. This is due to the increasing potential of modern weapons that cause more damage to the environment.⁸

It is currently impossible to fully assess the impact of the war on the environment due to a lack of accurate information and inaccessibility of many areas due to occupation and active hostilities. However, it is clear that the longer the war lasts, the more damage it will cause to the environment, and the more damages will have to be remediated in the future.

In Ukraine, there are several initiatives to monitor environmental impacts at the state and public levels. From the beginning of the full-scale invasion, the Ministry of Environmental Protection and Natural Resources initiated this work, which also involved the State Environmental Inspectorate. The civil society sector has also joined the monitoring, with the Center for Environmental Initiatives “Ecoaction”, Environment-People-Law, and Save Dnipro continuing to monitor the environmental impact of the war. As of 10th December 2023, Ecoaction has collected 1549 cases from open media sources that could have a negative impact on the environment.⁹

The State Environmental Agency has estimated that Russia has caused nearly \$52 billion¹⁰ of the environmental damage to land, water and air between February 24, 2022 and March 03, 2023 alone. After the destruction of the Kakhovka Dam the damage significantly increased. Most affected by the damage are the regions Donetsk, Luhansk, Kharkiv and Kherson. Some of these territories are still occupied, so it is still impossible to estimate the real extent of the damage.

5.1 Impact on biodiversity and protected areas

According to the Ministry of Environmental Protection and Natural Resources of Ukraine, as of October 2023, 812 protected areas were affected by hostilities.¹¹ This is 0,9 million hectares, or more than 20% of all nature conservation areas in the country. Under threat of destruction there are around 2.9 million hectares of the Emerald Network territories (160 sites), that are part of the nature protection network of Europe and are protected under the EU legislation and Bern Convention. In Ukraine, protected areas cover only 6.8% of the country’s territory. The loss of even one protected area could have a significant negative impact on unique species of animals and plants due to the destruction of natural habitats and ecosystems, which will be almost impossible to restore.

⁸ Water in war: Understanding the impacts of armed conflict on water resources and their management
Juliane Schillinger, Gül Özerol, Şermin Güven-Griemert, Michiel Heldeweg
<https://wires.onlinelibrary.wiley.com/doi/full/10.1002/wat2.1480>, last accessed 16.12.2023.

⁹ <https://en.ecoaction.org.ua/warmap.html>, last accessed 16.10.2023

¹⁰ <https://dei.gov.ua/post/2573>, last accessed: 26.07.2023.

¹¹ <https://www.kmu.gov.ua/news/mindovkillia-viinoiu-urazhenno-ponad-20-pryrodoohoronnykh-terytorii-ukrainy>, last accessed: 26.07.2023.

The Nature Reserve Fund of the highest protection rank (national parks, nature and biosphere reserves, national nature parks), covering a total of 1,236,366 hectares, has been negatively affected by Russia’s military actions since 2014 due to occupation, active hostilities, trenching, etc. As of spring 2022, 44% of such protected territories were in the combat zone, under the temporary control of the Russian invaders, or inaccessible to Ukraine (including Crimea and Luhansk and Donetsk regions occupied since 2014).¹²

Currently, the wetlands of the Sea of Azov and Black Sea coasts of Ukraine, which play an extremely important role in the conservation of many bird species on a European scale, are under constant influence of military operations. It is here that the Black Sea Biosphere Reserve, Azov-Sivash National Park and other protected areas are located to ensure their protection. Various species of gulls and terns, waders and other wetland birds set up colonies of thousands on their territories.

Another vulnerable group of birds to military action is species that nest in forests.¹³ The main risks to birds in such ecosystems is fright as a result of hostilities, deforestation, fires (e.g. from shelling and deliberate arson). Significant nesting populations of Red Data Book species are concentrated in the territory of current military operations in the north and east of the country. This may negatively affect the conservation of the population and the possibility of restoring these areas.

5.2 Impact on soil

According to the State Environmental Inspectorate , the armed aggression has contaminated more than 280,000 square meters and polluted 14 million square meters of Ukrainian land.¹⁴ Another type of contamination is the mining of territories, which currently accounts for 30% or 170,000 square km of Ukraine’s territory.

Since 2014, Russia’s actions have significantly disrupted the soil environment and caused widespread and long-term environmental degradation. The full-scale invasion since February 24, 2022 has further exacerbated the problem of soil degradation, and the high intensity of hostilities in certain areas has called into question the safety of using the land directly affected by military action.¹⁵

Unexploded ordnance and landmines have been causing serious damage to soils for decades. The threat is the release of toxic substances due to the corrosion of ammunition, as well as a number of risks associated with accidental detonation.¹⁶ Landmine contamination deprives local communities of access to land and natural resources. Heavy metals play a significant role in soil contamination. According to previous studies of the ATO/JFO area in 2016–2020, high levels of lead, copper, arsenic, zinc, chromium, cadmium, molybdenum, barium, potassium, magnesium, and tungsten were found in the soil.¹⁷ The aforementioned elements characterize the dominant spectrum of military-technogenic pollution and are the leading indicators for predicting changes in the environmental state of areas with contaminated soils and areas adjacent to them. The highest concentration

12 <https://uncg.org.ua/44-najtsinnishykh-pryrodnykh-terytoriy-ukrainy-okhopleni-vijnou-doluchajtesia-do-initsiatyvy-riatuemo-pryrodu-u-dni-vijny-razom>, last accessed: 26.07.2023.

13 <https://uncg.org.ua/how-russia-s-war-against-ukraine-can-affect-birds/>, last accessed: 26.07.2023.

14 <https://dei.gov.ua/post/2512>, last accessed: 26.07.2023.

15 <https://ecoaction.org.ua/zabrudnennia-zemel-vnaslidok-rosii.html>, last accessed: 26.07.2023.

16 Kalderis, D.; Juhasz, A. L.; Boopathy, R. and Comfort, S (2011): Soils contaminated with explosives: Environmental fate and evaluation of state-of-the-art remediation processes (IU- PAC Technical Report) Pure Appl. Chem., Vol. 83, No. 7, pp. 1407–1484, 2011. doi:10.1351/ PAC-REP-10-01-05

17 Ivan Franko National University Lviv (2022): Applied Landscape Science: History, Modernity, Prospects: Proceedings of the All-Ukrainian Scientific Seminar in Memory of Professor Anatolii Melnyk (Lviv - Vorokhta, October 6–9, 2022) available at: http://geoecology.lnu.edu.ua/wp-content/uploads/2022/10/prykkladnelandshaftoznavstvo_materialyseminaru_lviv2022.pdf, last accessed: 13.09.2023.

of oil products can be observed in the areas of fuel and lubricants spills. At sites of major oil spills, changes in the chemical composition of the soil often disrupt an important soil property, the ability of the soil to heal itself, and reduce the biological activity of the soil. Hydrocarbon-contaminated soils are a source of toxic gases and dusts that become airborne and have acute toxic effects on soil biodiversity.¹⁸ Benzene, toluene, ethylbenzene, and xylene released from freshly contaminated soils can cause chronic health effects.¹⁹

Military actions also lead to deformation of the soil cover - mechanical, physical, chemical impact, thermal pollution; surface clutter; flooding, salinization, erosion processes, pyrogenic degradation, dehumidification, etc.

5.3 Impact on water resources and infrastructure

Water infrastructure (water pipes, wastewater treatment plants, dams, etc.) can be targeted by military operations.

The occupiers are shelling water infrastructure, mining dams, and conducting military operations in the Black Sea and the Sea of Azov.²⁰ For example, the Russian Army destroyed the building of the sewage pumping station as a result of shelling of the treatment facilities of the Vasylivka Water Supply and Sewerage Maintenance plant (Zaporizhzhia region).²¹ Wastewater is discharged into the Dnipro River without any treatment. Over the past year, there have been many similar examples that have led to pollution of Ukraine’s water resources and deterioration of drinking water for the population. So far the biggest incident was the destruction of the Kakhovka Dam on June 6th 2023, which caused extensive flooding of about 600 km² in Kherson Oblast, having a disastrous effect on wildlife and habitats, water supply and energy security for the population, devastating impacts on fisheries and resulted in the degradation of farmland.^{22, 23}

5.4 Impact on marine environment

Underwater marine ecosystems are also affected by hostilities.²⁴ The wreckage of sunken ships and missiles, the use of anchors, and the detonation of munitions can damage underwater communities that inhabit the seabed. Such seagrass and algae communities usually contain the greatest biodiversity, so their damage can be critical to the existence of the entire ecosystem. And while wrecks can form new habitat by creating artificial reefs that aquatic organisms can colonize, the long-term damage from pollution from wrecks will still far outweigh the likely benefits.

Military operations can also directly affect marine species, jeopardizing their existence. Underwater explosions cause shock waves that can spread over long distances underwater, stun fish and kill other organisms.

18 Meng, C., Li, M., Li, Q., Hu, Y., Li, Y. (2018): Characterizing the spatio-temporal exposure and health risks of polycyclic aromatic hydrocarbons in an oilfield, China. Hum. Ecol. Risk Assess. 24 (4).

19 Khan, K.Y., Ali, B., Stoffella, P.J., Feng, Y., Cui, X., Guo, Y., Yang, X., 2020. Bioavailability and bioaccessibility of Cd in low and high Cd uptake affinity cultivars of Brassica rapa ssp. Chinensis L. (Pakchoi) using an In vitro gastrointestinal and physiologically-based extraction test. Commun. Soil Sci. Plan 51 (1), 28–37.

20 <https://ecoaction.org.ua/voda-iak-dzherelo-zhyttia.html>, last accessed: 26.07.2023.

21 <https://www.ukrinform.ua/rubric-ato/3429492-u-vasilivci-na-zaporizzi-vorogi-zrujnuvali-ocisni-sporudi.html>, last accessed: 11.02.2024.

22 <https://www.nytimes.com/interactive/2023/06/16/world/europe/ukraine-kakhovka-dam-collapse.html>, last accessed: 19.07.2023.

23 <https://www.aljazeera.com/news/2023/6/8/bodies-floating-in-flooded-areas-after-dam-collapse-zelenskyy>, last accessed: 19.07.2023

24 <https://ecoaction.org.ua/vijna-i-more.html>, last accessed: 26.07.2023.

Explosions and the use of military sonars could also threaten cetaceans. From January to October 2022, experts from Black Sea countries recorded around 1,000 cases of dead dolphins, which is two to three times greater than in 2019–2021.²⁵

The sinking of warships, aircraft and other military equipment can lead to oil spills that are toxic to marine life and can poison the marine environment for decades. Analysis of the satellite data shows that the oil film formed as a result of the sinking of vessels at some point covered tens of thousands of square kilometers of marine protected areas in Ukraine. The destruction by Russian forces of the Kakhovka Dam also had a significant impact on the Black Sea, causing temporary desalination and significant pollution.²⁶

5.5 Impact on climate

In addition to its environmental impact, war has a direct impact on the climate, which also entails the global impact of the Russian war. The analysis of greenhouse gas (GHG) emissions in four key areas directly caused by Russia's war in Ukraine determines that GHG emissions for twelve months of full-scale war, amounting to at least 120 million tons of CO₂ eq.²⁷ The GHG emissions from the Russian invasion of Ukraine are significant and include both emissions from preparations for war (e.g., redeployment of troops, training, preparation for the invasion, production of munitions and equipment, emissions from the combustion of fuel by armored vehicles and cars, logistics trucks and aircraft, emissions from ammunition firing and explosions, etc.), as well as post-war emissions (e.g., reconstruction-related emissions).

The largest share of emissions comes from the reconstruction of civilian infrastructure – it accounts for 50.2 million tCO₂e out of 120 million tCO₂e. Fires, both in forests and in settlements, account for 17 %. Military operations account for almost 22 % of emissions. Interestingly, leaks from the Nord Stream 1 and Nord Stream 2 pipelines have released large amounts of natural gas (which consists of methane, a potent greenhouse gas), resulting in significant GHG emissions that exceed current estimates of emissions from the fighting. After twelve months of full-scale warfare, the total emissions already amount to Belgium's annual GHG emissions.²⁸

25 Vishnyakova K. et al., „An unusually high number of cetacean strandings in the Black Sea, 2022 – is it the consequence of war?“, 34th Conference of the European Cetacean Society, Pontevedra, Spain, pp. 256, 2023
26 <https://uwecworkgroup.info/impact-of-russias-invasion-of-ukraine-on-the-black-and-azov-seas/>, last accessed: 06.03.2024.
27 <https://en.ecoaction.org.ua/climate-damage-by-russia-12-months.html>, last accessed: 26.10.2023.
28 Ibid.

6 Aarhus rights in times of war

Public participation in decision-making relating to environment in Ukraine is regulated by the vast framework of horizontal and sectoral legislation. The impetus for participatory approach to the decision making on local, regional and state level was given by the ratification of Aarhus Convention²⁹ and many other multilateral environmental agreements, and due to the signing of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part.³⁰ The necessity to approximate Ukrainian legislation with EU Directives in environmental field facilitated the process of adoption of new laws facilitating public participation in decision-making affecting the environment.

The Constitution of Ukraine³¹ in article 38 laid the legal basis for further legislation on public participation of ordinary citizens in the decision-making of state bodies by stating that citizens have the right to participate in state governance, in national and local referenda.

The Law of Ukraine on Protection of the Environment (1991)³² is the central and oldest piece of environmental legislation in Ukraine. In 2002, it was amended for transposing the provisions of the Aarhus Convention into domestic legislation. According to Article 9 of the law (as amended in 2002), every citizen has the right to participate in discussion and make proposals concerning draft laws, materials on the planning, construction and reconstruction of facilities, that can adversely affect the environment, addressing the suggestions to the state bodies and bodies of local self government, legal persons that participate in decision-making; to participate in the development and implementation of measures for environmental protection, rational and complex use of natural resources; right of free access to information on the state of environment and free access, use, dissemination and storage of such information, except information with limitations. Article 10 Guarantees of environmental rights of citizens mentions that environmental rights of citizens are ensured by participation of non-governmental organizations and citizens in activities related to environmental protection. Article 11 mentions that local councils, state environmental bodies are obliged to assist citizens in environmental protection measures, to take their proposals concerning improvement of the state of environment and rational use of natural resources into account, facilitate participation of citizens in the decision-making on environmental protection and usage of natural resources. Article 21 foresees the rights of non-governmental organizations, which include the right to participate in development of plans, programs related to the environmental protection, right of free access to environmental information.

In May, 2017 the Ukrainian parliament adopted the Law on Environmental Impact Assessment (EIA).³³ It provides the list of planned activities which are subject to the mandatory EIA procedure. The Law stipulates in details the procedure of public consultations, access to information related to the EIA decision-making and access to justice provisions.

In March 2018, the Ukrainian parliament adopted the Law on Strategic Environmental Assessment (SEA).³⁴ The law provides for effective public participation in SEA procedures

29 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted in 1998.

30 Official Journal of European Union, L series 161, 29.5.2014, p. 3–213.7

31 Adopted on June 28, 1996, <https://zakon.rada.gov.ua/laws/show/254k/96-wp#Text>, last accessed: 20.01.2023.

32 <https://zakon.rada.gov.ua/laws/show/1264-12#n69>, last accessed: 20.01.2023.

33 <https://zakon.rada.gov.ua/laws/show/2059-19#Text>, last accessed: 20.01.2023.

34 <https://zakon.rada.gov.ua/laws/show/2354-19#Text>, last accessed: 20.01.2023.

for strategies, plans and programmes for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, urban and rural planning, and land use.

Public participation provisions are foreseen in the Law On Air Protection³⁵ during air permitting procedure. The Law obliges the applicant to publish the notice on the start of air permitting procedure in printed media and public is given time to provide comments or suggestions to the local administration.

Vast public participation provisions in the development and approval of planning documentation at national, regional and local levels were passed in 2011. The Law On Regulation of Planning Activities³⁶ contains article 21 “Public consultations of the drafts planning documents on local level” with detailed provisions on the stages of public participation, main obligations of the applicant on the organization of public consultation arrangements, access to information requirements. The Law foresees the timeframes for the duration of public consultations and public hearings and mentions the possibility to arrange for the creation of Agreement Commission in cases when disputable issues arose. The Decision of the Government On the rules of procedures of public hearings concerning planning documentation on local level dated 25/05/2011, N555³⁷ provided more detailed framework for public consultations. When SEA of such documents is needed, then public consultation procedures are combined with SEA process. Local consultations are obligatory for the following local planning documents: master plan, detailed plan of the territory and complex plan of spatial development of the territories of local communities.

Access to environmental information is regulated by the Law on Access to Public Information³⁸ and the Law On Information.³⁹ The Constitution of Ukraine⁴⁰ in article 50 also envisages the right of free access to information on the state of environment, on the quality of food and commodities, and the right to disseminate such information. Access to public information is ensured by the open sources of information, online registers, data bases, web-sites of authorities, etc.

Access to courts in cases relating to the environment is provided by the provisions of the procedural codes of Ukraine (the Civil Procedural Code⁴¹, the Commercial Procedural Code⁴², and the Code of Administrative Legal Proceedings⁴³) and by the Article 9 of the Aarhus Convention. These norms guarantee access to court for persons whose rights, freedoms and interests were violated. The Constitution of Ukraine in Article 55 states that rights and freedoms of person and citizen are protected by court. Everyone’s right of challenging in court the decisions, actions and lack of actions of state bodies, bodies of local self-government, their officials is guaranteed.

6.1 Recent amendments to public participation rights

On 20 September, 2022 the Parliament approved the Law On National Pollutant Release and Transfer Register (PRTR).⁴⁴ This law will facilitate public access to information on emissions, pollution and waste management as it provides for the creation of the na-

35 <https://zakon.rada.gov.ua/laws/show/2707-12#Text>, last accessed: 20.01.2023.
36 <https://zakon.rada.gov.ua/laws/show/3038-17#Text>, last accessed: 20.01.2023.
37 <https://zakon.rada.gov.ua/laws/show/555-2011-n#Text>, last accessed: 20.01.2023.
38 <https://zakon.rada.gov.ua/laws/show/2939-17#Text>, last accessed: 20.01.2023.
39 <https://zakon.rada.gov.ua/laws/show/2657-12#Text>, last accessed: 20.01.2023.
40 <https://zakon.rada.gov.ua/laws/show/254к/96-вп#Text>, last accessed: 20.01.2023.
41 <https://zakon.rada.gov.ua/laws/show/1618-15#Text>, last accessed: 20.01.2023.
42 <https://zakon.rada.gov.ua/laws/show/1798-12#Text>, last accessed: 20.01.2023.
43 <https://zakon.rada.gov.ua/laws/show/2747-15#Text>, last accessed: 20.01.2023.
44 <https://zakon.rada.gov.ua/laws/show/2614-20#Text>, last accessed: 20.01.2023.

tional register with information on pollution, emissions and hazardous facilities. On 9th July, the Law Concerning Improvements of Regulatory Mechanism of Emissions of Pollutants into the Air Amending the Law On Air Protection was adopted. It slightly changed the public participation provisions of the procedure of emission permitting and shifted the level of legal regulation of public involvement in the emission permitting procedure from the by-law to the level of law. It listed the documents which must be submitted with the application for emission permit and they include: proof of fact of publication of the notice of intention to receive emission permit in printed local mass media, and the notice of local state administration concerning the availability of public comments concerning emission permit.

In October 2022, the Cabinet of Ministers of Ukraine approved the new version of the Rules of procedure of public hearings concerning the planning documentation on local level. It provided the new concept of “public” and changed the rules for public hearings, public information and provision of information. There is widespread public criticism of this new decision of the Cabinet of Ministers of Ukraine, inter alia due to the contradiction of its provisions with EU directives and international conventions (namely the SEA Protocol).

In November 2022, the Parliament approved the amendments to the Law on SEA, including the issue of responsibility for violation of the Law on SEA, and it foresaw the creation of SEA online register which will ensure public access to it through Internet.

On 18 June 2020, the Law on EIA was amended⁴⁵ due to the COVID hazards, and it restricted public hearings in EIA procedure during the period of quarantine, which is determined by the decision of the government. Thus the public participation during the EIA should be limited to the written public comments and proposals (electronic or in paper) and this should be mentioned in the public notification. No public hearings could be held during quarantine.

6.2 Impact of the war on the rights to information, participation and access to justice

The start of the full-scale war in 2022 changed the legal landscape and accelerated the law-drafting and adoption of many laws and by-laws, affecting the environmental rights and environment itself. The martial law declared by the Decree of the President of Ukraine, could result in the limitations of certain constitutional rights and freedoms for a determined period. On 24 March 2022, the President of Ukraine adopted the Decree on Enactment of Martial Law⁴⁶, and in para 3 it mentioned that during martial law some constitutional rights could be limited, namely foreseen in article 30 – 34, 38, 39, 41 – 44, 53 of the Constitution of Ukraine.

Especially relevant for environmental activists are Article 34, which foresees the right to freedom of expression and Article 38 which vests the right to participation in state relations, in national and local referendums, the right to freely elect and be elected to the state bodies and bodies of local self-government. The right of access to environmental information, quality of food and goods could not be limited during martial law, in accordance with Article 50 of the Constitution of Ukraine.

On 12 March 2022 the Government of Ukraine adopted its Decision On the Problems of Functioning of Informational Systems, Electronic Communication Systems, Public Reg-

45 <https://zakon.rada.gov.ua/laws/show/733-20#n2>, last accessed: 20.01.2023.
46 <https://www.president.gov.ua/documents/642022-41397>, last accessed: 20.01.2023.

isters During Martial Law. It allowed ministries and other executive bodies, municipal and state enterprises to, inter alia, limit, suspend the work of informational and electronic communication systems and public electronic registers. Such measures should be stopped during 6 months after termination of martial law.⁴⁷

On 20 April, 2022, the Ministry of Environment passed the Order on Temporary Limitation of Access to Unified EIA register.⁴⁸ By this Order, the Ministry limited access to the EIA register for external users. This register had been closed for the public one month earlier, by the Order of the Ministry of Environment from 22.03.22 № 159. Other registers and online data base were closed too (such as Land use register, Forest use register) by the decisions of respective central executive bodies operating these registers. Later, on June, 2022 the Ministry partially renewed the access to EIA register by its Order N225.⁴⁹ It opened the access to information on planned activity, name of the investor, region where the planned activity will be located, information on the duration of public consultations. It left all the cases from the register which received conclusions on the EIA report before 24.02.2022 closed, including technical documentation (EIA and other documents), Google map with location of planned activity.

In March 2022, the Parliament approved the amendments to the Law On Environmental Impact Assessment during operation of martial law.⁵⁰ The law provides for the following exemptions from the obligation to conduct an EIA procedure, namely: a) planning activities, directed solely at the defence of the country, b) the elimination of consequences of emergencies and consequences of antiterrorist operation at the areas of antiterrorist operation during its course. In accordance with the criteria, provided for by the Cabinet of Ministers of Ukraine. These activities also comprise renovation activities aimed at elimination of the consequences of military aggression and military operations during martial law and during rebuilding period after the hold of the military activities.

In June 2022, the Parliament also amended the Law on Strategic Environmental Assessment⁵¹ (SEA) granting an additional exemption for the obligation to conduct SEA for plans of reconstruction and development of regions, plans of reconstruction and development of territorial communities. In November 2022, the Parliament also voted for new changes in the Law on Strategic Environmental Assessment which introduced the operation of SEA register, and regulated the issue of the responsibility in the sphere of SEA.⁵² These amendments will take effect in May, 2023.

The start of full-scale war against Ukraine in 2022 resulted in significant limitations to the realization of the right of access to environmental information and public participation, based on the defence and national security arguments. Numerous electronic data-base, registers containing public information, including environmental data, were closed for the general public. Effective protection of nature and the environment became very complicated or impossible due to such limitations of the right of access to public and environmental information. Participatory possibilities for the general public in environmental decision-making were also limited: the Parliament decided to limit the scope of EIA and SEA, and thus limit the public consultations in certain activities resulting from military aggression.

47 <https://zakon.rada.gov.ua/laws/show/263-2022-п#Text>, last accessed: 20.01.2023.

48 <https://zakon.rada.gov.ua/rada/show/v0177926-22#Text>, last accessed: 20.01.2023.

49 [https://mepr.gov.ua/files/Наказ%20225%20\(відкриття%20Рєєєєєє%20\(2\).pdf](https://mepr.gov.ua/files/Наказ%20225%20(відкриття%20Рєєєєєє%20(2).pdf), last accessed: 20.01.2023.

50 <https://zakon.rada.gov.ua/laws/show/2132-20#n23>, last accessed: 20.01.2023.

51 <https://zakon.rada.gov.ua/laws/show/2389-20#n348>, last accessed: 20.01.2023.

52 <https://zakon.rada.gov.ua/laws/show/2717-20#n82>, last accessed: 20.01.2023.

Martial law became the basis of many legislative changes, many of which undermine full compliance of Ukraine with Aarhus Convention provisions. Such legislative changes were closely analyzed by the Aarhus Convention Compliance Committee upon the request of the Government of Ukraine. On June, 9, 2023 the Committee stated that during time of war the Convention, the obligations incumbent upon a Party of Aarhus Convention continue to apply. The Committee considers that it is not inconsistent with article 6 (6) of the Convention that access to information contained in the EIA register is presently only available upon request, thus Committee concluded that the temporary suspension of unlimited access to the EIA register during the ongoing war is not inconsistent with either articles 3 (9) or 6 (6) of the Convention. Also competent public authorities at present erase all information related to the location of the proposed activity from EIA documentation provided to the public, including any coordinates, maps or other references to geographic location. Deletion of this information renders it effectively impossible for the public concerned to comment on the scope, depth and quality of the EIA report. The Committee recommended that, to the extent that it may be possible and appropriate, the general location of the activity, albeit not its precise location, be indicated during EIA procedure. The Committee concluded that, irrespective of whether regional restoration plans and programmes are subject to strategic environmental assessment, public participation fully meeting the requirements of article 7 of the Aarhus Convention must be provided for. As the conclusion the Committee stated that the Convention remains fully applicable in time of war, in order for the public to be able to exercise its rights under the Convention effectively during the war, the means used to implement the Convention's provisions may in some cases require adjustment.⁵³

53 https://unece.org/sites/default/files/2023-06/A3_Ukraine_advice_adv_unedited.pdf, last accessed: 13.09.2023

7 Civil society engagement and participation on climate and environmental issues in times of war

7.1 Development of civic engagement in times of war

The registration of non-profit organisations in Ukraine jumped in 2022. More non-profit organisations were registered than in the previous eight years.⁵⁴ Individual involvement also increased from 26 to 42 per cent. The newly established organizations mainly have charitable purposes or support the defence of the country. For example, fundraising campaigns for the military, assistance in countering Russian propaganda, but also refugee care is largely supported by voluntary engagement. The structures for this engagement are build on the experience and structures of the Euromaidan and the response to Russia's invasion of the the territories of Donetsk and Luhansk regions and Crimea in 2014. The structures also benefit from resilience gained during the COVID pandemic.

But of course during the war also civil society organisations are suffering high losses and paying a high price, whether because activists are forced to flee by the threat, have to deal with the humanitarian consequences of the war or die.⁵⁵

In order to be able to understand the scale of the refugee movements, here is some data. Since the Russian full-scale invasion in Ukraine began, Ukrainians have fled their homes, and displacement has occurred and continues to occur both within and outside Ukraine. During the first year of the full-scale Russian invasion of Ukraine, more than 13 million people (30 % of the total population) were uprooted from their homes, including nearly 8 million refugees and around 5 million internally displaced people within Ukraine (IDP).⁵⁶ Some people have returned for various reasons. The liberation of the occupied territories north of Kyiv, east of Kharkiv and around Kherson made people feel safer. Others simply did not want to be separated from their families for a long time (men aged 18–60 are not allowed to leave the country). Some refugees or IDPs simply did not have the means to stay elsewhere.⁵⁷

Half of those who have left plan to return home only after the war ends. 10% plan to return in the near future, 23% are still waiting, and 11% do not plan to return home. Among the residents of the areas close to the hostilities (south-east), two-thirds are currently living outside their homes.⁵⁸

As indicated above, much of the civil society engagement is naturally focused on humanitarian causes and support for the country's defence. But other causes remain strong, with more than 10 per cent of non-profit and non-governmental organisations in Ukraine pursuing environmental causes. The activities of Ukrainian environmental NGOs since the beginning of the war have faced tremendous challenges, but have increased in unexpected ways. It was Ukrainian environmental NGOs that called on European states to sanction the supply of Russian energy products.⁵⁹ The narrative of energy sovereignty and energy in-

⁵⁴ In 2021 836 non-profit organizations were registered. In 2022 it was 6367.

⁵⁵ Worschech, Susann 2023: Die neuen Facetten der ukrainischen Zivilgesellschaft. In: Ukraine-Analysen 287, <https://www.laender-analysen.de/ukraine-analysen/287/UkraineAnalysen287.pdf>, last accessed: 21.07.2023.

⁵⁶ <https://www.unhcr.org/see/15367-one-year-after-the-russian-invasion-insecurity-clouds-return-intentions-of-displaced-ukrainians.html>, last accessed: 06.03.2024.

⁵⁷ Analytical report within the framework of the project "Refugees from Ukraine: intentions to return, impact on the Ukrainian economy and recommendations for public policy". <https://ces.org.ua/who-are-ukrainian-refugee-research>, last accessed 13.09.2023

⁵⁸ Ibid.

⁵⁹ https://www.with-ukraine.org/?link_id=0&can_id=c3f481784bc39344f88c87a327eaa35c&email_referrer=email_1817723&email_subject=one-year-of-a-full-scale-ru-war-against-ukraine-narrative-discussion-before-february-24, last accessed: 21.07.2023.

dependence has been formative for the movement. Nowadays they support activities from local to international which contribute to this goals, e.g. promoting Solar PV instalments for decentralized energy supply in Ukraine, still advocate for ambitious climate targets.⁶⁰ During the time of the active conflict NGOs use Citizen science approaches to monitor the (environmental) impacts of the war.⁶¹

Furthermore, the NGO network is already preparing for the post-war period, actively and collectively calling for a green reconstruction of Ukraine.^{62, 63}

It is evident that participation in environmental and climate protection issues is not a top priority in times of war. However, recent studies give hope that dealing with the consequences of war will support a new cooperative style of politics at the local level. According to a field study⁶⁴ commissioned by the Congress of Local and Regional Authorities of the Council of Europe (CoE Congress) and the [Association of Ukrainian Cities](#) with 241 local authorities between August and September 2022, there are two main findings:

Firstly local authorities show resilience in times of war and keep on providing the administrative services to their residents. 28 percent of all local authorities have not stopped their services at all, 43 per cent returned to normal operations two weeks after the full scale invasion or the liberation of the territory, and 72 per cent provide all administrative services. Innovations as the E-Service-App Diia make this possible. Secondly the survey shows, that local authorities more often consult with and involve stakeholders such as NGOs, local population and business in solution of challenges that arise during war times.⁶⁵

7.2 Participatory green recovery

Planning for post conflict recovery requires rapid decision-making and different planning processes to meet the needs of rebuilding infrastructure and human settlements under time constraints and in the absence of the necessary human and financial resources. One of the major challenges to be addressed is the legacy of hostilities in the area, such as military and demolition waste, polluted waters and soils, degraded natural environment and many others. The need for green reconstruction after the war will force mainly local authorities to decide on the future framework of the local development.

During the period of martial law the parliament and the government took some steps to regulate the process of local recovery and to define the policy of such reconstruction for Ukraine as a whole.

Institutional support for the recovery of Ukraine was provided by the President of Ukraine who established the National Council for the Restoration of Ukraine from the Consequences of War in April, 2022.⁶⁶ This Council is a consultative body attached to the Office of the President of Ukraine, and consists of the key officials of the Parliament (speaker of the parliament and heads of parliamentary committees) and Government of Ukraine (all ministers). Its main goal is to develop measures for the post-war recovery and development of Ukraine, including reconstruction of transport, medical, social and mu-

⁶⁰ <https://en.ecoaction.org.ua/solar-to-the-rescue.html>, last accessed: 21.07.2023.

⁶¹ <https://en.ecoaction.org.ua/warmap.html>, last accessed: 21.07.2023 and the portal <https://virtualukraine.info/en/war-en/> which before the invasion in 2022 served as a portal for virtual tourism; last accessed: 21.07.2023.

⁶² <https://en.ecoaction.org.ua/green-reconstruction-ukraine.html>, last accessed: 21.07.2023.

⁶³ <https://en.ecoaction.org.ua/ukraine-facility-call-to-ec.html>, last accessed: 21.07.2023.

⁶⁴ <https://www.ponarseurasia.org/national-security-in-local-hands-how-local-authorities-contribute-to-ukraines-resilience>

⁶⁵ Keudel, Oleksandra and Huss, Oksana in: Ukraine Analysen 287: <https://www.laender-analysen.de/ukraine-analysen/287/UkraineAnalysen287.pdf>, last accessed: 27.07.2023; see also the uncut english version: <https://www.ponarseurasia.org/national-security-in-local-hands-how-local-authorities-contribute-to-ukraines-resilience>, last accessed: 27.07.2023; and the original data source: <https://rm.coe.int/0900001680a9f1fe>, last accessed: 27.07.2023.

⁶⁶ <https://zakon.rada.gov.ua/laws/show/266/2022#Text>, last accessed: 19.09.2023.

municipal infrastructure, industry and housing, energy and communications infrastructure, military complex development, modernisation and re-launch of the economy, unemployment measures and support for families with children, affected communities, restoration and preservation of cultural facilities and sites. The National Council created 24 working groups with broad and open representation of all the stakeholders: experts, members of civil society, business, academia, etc. Their task was to draw up an action plan of post-war recovery and development of Ukraine, a list of priority reforms and strategic initiatives, draft laws and by-laws, necessary for the effective work on recovery and rebuilding of Ukraine during the war and in the post-war period.

The results of working groups activities were summarized in draft Action Plans on different topics⁶⁷, including the Recovery Plan with a focus on environmental safety.⁶⁸ According to the plan, the tasks and projects in the field of environmental safety should ensure the implementation of environmental policy in accordance with the European integration aspirations of Ukraine and the European Green Deal provisions, as well as integration of environmental component into all recovery projects and reforms.

The participation of all the stakeholders in development of the Recovery Plan was organized in the summer of 2022, and the final version of the Recovery Plan was presented at the conference in Lugano (Switzerland) in July, 2022. The participants of the conference approved the following principles of Ukraine's recovery in the Lugano Declaration:

1. Partnership;
2. Reform focus;
3. Transparency, accountability and the rule of law;
4. Democratic participation
5. Multi-stakeholder engagement ;
6. Gender equality and inclusion;
7. Sustainability.⁶⁹

The Policy brief on Environmental Recovery by the Lugano Conference⁷⁰ states that within the National Recovery Plan, the Government of Ukraine sees the potential for Ukraine to ensure the green transition to the new green economy and further the full integration into the European economy and its resilience.

A dedicated website for the Ukraine Recovery Plan has been launched.⁷¹ It lists the projects and activities in various spheres of economy, environmental protection, social development, energy and infrastructure, etc. and explains the approaches to recovery. In general, the Recovery Plan is very far from being called a Green Recovery Plan for Ukraine, prepared in accordance with the provisions of the EU Green Deal , as it is fragmented, preserves the traditional approach to development and reconstruction, combines new and

⁶⁷ <https://www.kmu.gov.ua/diyalnist/nacionalna-rada-z-vidnovlennya-ukrayini-vid-naslidkiv-vijni/robochi-grupi>, last accessed: 19.09.2023.

⁶⁸ <https://www.kmu.gov.ua/storage/app/sites/1/recoveryrada/eng/ecosafety-eng.pdf>, last accessed: 19.09.2023.

⁶⁹ The Lugano Declaration is the final outcome document of the URC2022. The Declaration was presented at the closing plenary of the conference in Lugano.

⁷⁰ https://uploads-ssl.webflow.com/621f88db25fbf24758792dd8/62bd020b4b6cf255d85115aa_ENG_Environmental%20Recovery_URC.docx.pdf, last accessed: 27.07.2023.

⁷¹ <https://recovery.gov.ua/en>, last accessed: 27.07.2023.

“old Soviet” projects and activities, which is why the position of the Minister of Environment of Ukraine during the Lugano conference was strongly criticised by civil society.⁷²

In January 2023 the Government of Ukraine created the State Agency of Recovery and Infrastructure Development of Ukraine (on the basis of State Agency for Motor Roads of Ukraine) and in February 2023 it approved the rules of its operation.⁷³

Amendments to the Law On Regulation of Urban Planning Activities in 2022⁷⁴ introduced new development documents – the “Program of complex recovery of oblast (districts)” and the “Program of complex recovery of territorial community (or its part). These programmes define the main spatial, planning and social-economic priorities for the recovery policy and contains a list of measures for the recovery of the territory of the oblast or the local community. It aims at repairing the damages suffered from the military aggression against Ukraine or mitigating the social-economic, infrastructural, environmental and other crisis connected to it. Such programs are not part of the urban planning documentation and there is no provision for strategic environmental assessment (SEA) of such programmes. Such programs must be adopted by the head of the oblast state administration (for the regional level), village or town councils (for the municipal level). The Law also provides for the procedure of public participation in such recovery programmes in Art. 21¹. The Adoption of such plans without public consultation is prohibited. The programmes of complex recovery of the territory of municipalities include:

- _ general description of the territory, including environmental assessment,
- _ analysis of negative consequences of the war,
- _ analysis of the resources of the territory for recovery of its functionality
- _ analysis of the necessity of preparation of the territory (de-mining, removal of demolition waste, recultivation of land),
- _ information on the war damage , accidents to residential buildings, industrial facilities, social and cultural buildings, municipal infrastructure;
- _ analysis of technical and economic possibilities of reconstruction of damaged facilities and buildings or new construction;
- _ proposals for changing of functional purpose of the territory,
- _ proposals for amendments or development of new urban-planning documentation,
- _ action plan of complex development of the territory with the prioritization,
- _ preliminary financial-economic calculation of the complex recovery with sources of financing of such reconstruction.

These plans of recovery later become the basis for amendments or development of new urban-planning documentation at the local level.

Bodies responsible for their elaboration, are obliged to publish their decisions on the initiation of the process of drafting a complex recovery programme on their websites, to post the draft of the programme on their web-sites for public comments for at least 15 days; to register, consider and take into account public comments, to coordinate controversial issues with the public and to publish the results of public consultations. This means that regardless the absence of an obligation to conduct a SEA, the public can submit their

⁷² <https://ecopolitic.com.ua/ua/news/luganskij-sorom-ekoaktivisti-rozkritikuvali-plan-vidnovlennya-prirodi-ukraini/>, last accessed: 27.07.2023.

⁷³ <https://zakon.rada.gov.ua/laws/show/193-2023-n#n12>, last accessed: 27.07.2023.

⁷⁴ <https://zakon.rada.gov.ua/laws/show/2254-20#n27>, last accessed: 28.07.2023.

comments and have the opportunity to negotiate and discuss the most disputable issues of their local recovery plan with local body or regional body (concerning regional recovery plan).

The provisions of the Law On Regulation of Urban Planning Activities do not specify the relationship between the national recovery plan and regional and local recovery plans, but it is important to note that approved local recovery plans will result in changes or new local planning documents (master plan, detailed plan of the territory) which are subject to SEA and wide public consultations.

Thus, there is a legally established possibility of the local community to participate in the recovery process at the local level, and through the procedure of SEA at later stages of development (amendment) of urban building documentation, there is a chance of ensuring sustainable or green recovery on the local level at the initial stages of planning.

Participation procedures on every political level are currently challenged, this is also true for engaging the public in the decision-making process in the reconstruction planning process. Main challenges are the displacement of the population, the lack of access to information before decision-making (transparency) in Ukraine, lack of capacity and lack of resources or other priorities during wartime.

NGOs welcome the fact, that the reconstruction planning so far is pursued with multi-sectoral engagement and involving actors from local, subnational and national level. They advocate for engaging with the public in the planning process for reconstruction, and warn against concentration of decisions. The local communities that have been affected play an important role in the planning as they know best what they need. NGOs can help bridge the local and national levels in this process, provided that there is a transparent process for creating the plan and that CSOs have the necessary resources to participate.

The rationale NGOs are advocating for is that engagement at the local level to take local concerns and capacities of communities into account, will contribute to their empowerment and local socio-economic co-benefits, such as public health improved by clean energy, access to electricity, investment opportunities related to lower renewable electricity costs.

8 Conclusion

Since the first edition of the study “Civic Space for Participation in Climate Policies in Ukraine”⁷⁵ published in 2020, the situation for the country as a whole and for civil society has changed dramatically. In particular, if we look at stability and peace as the first indicator under the criterion “Fundamental Requirements” in the “Participation Handprint”, the starting point for participation, but also the priorities and commitment of the government have of course changed since Russia invaded Ukraine in February 2022.

After the first shock wore off, activities of Ukrainian civil society organisations and private engagement have multiplied. Primarily engagement is focussed on humanitarian purposes to deal with the consequence of the brutal aggression of course, but other causes of activism such as environmental and climate protection have been upheld and have been noticeable beyond the borders of Ukraine. Joint campaigns of the movement have helped to put the narrative of energy independence and sovereignty on the political Agenda and are shaping the debate on a green recovery for Ukraine. NGOs take citizen science approaches to monitor the damages of the war, pool information and run websites with the aim of creating transparency about the environmental impact of war and preparing for a full environmental recovery of Ukraine.

The start of the full-scale invasion against Ukraine in 2022 resulted in significant and comprehensible restrictions on the right of access to environmental information and public participation, based on the arguments of defence and national security. Many electronic databases and registers containing public information were closed to the public. The Parliament also decided to limit the scope of the Environmental Impact Assessment and the Strategic Environmental Assessment, thus limiting public consultation on. Martial law became the basis for numerous legislative amendments, some of which undermine full compliance with the provisions of the Aarhus Convention. At the same time, there have been legislative attempts to approximate EU legislation, as foreseen in the Association Agreement, in the field of air protection, waste management and the Pollutant Release and Transfer Register etc. This resulted in the introduction of new provisions on public participation and access to information. Hopefully, after the end of martial law, new provisions will enter into force, new mechanisms for access to information will be (re)launched and public consultations will be resumed.

⁷⁵ https://www.ufu.de/wp-content/uploads/2021/02/ZIVIKLI-study_Ukraine_final.pdf, last accessed: 19.09.2023.

Ukraine ratified the United Nations Framework Convention on Climate Change (UNFCCC) in 2004, and the Paris Agreement in 2016 to limit global warming and its impacts together with 195 other countries. However, current national commitments (Nationally Determined Contributions – NDCs) are insufficient to keep the global average temperature rise this century below 1.5°C above pre-industrial levels. Time is running out and rapid and far-reaching changes are needed across all sectors.

Civil society actors play a crucial role in developing and implementing climate policies, as they act as nature's advocate and voice, driven by the desire to protect the environment and preserve healthy living conditions for human beings.

The publications **“Civic space for participation in climate policy”** aim to analyse the status and conditions of climate-related participation and concrete examples of participatory policy-making in different countries. The analyses examine how national civil society participates in national policy processes related to the Paris Agreement. The studies also identify country-specific barriers to meaningful, effective and long-term participation, and provide recommendations for overcoming these barriers. The civic space for participation in climate policies in Ukraine has already been analysed in a comprehensive study published in 2020. This report assesses the change of legislative and organizational framework for civil engagement in planning of green recovery and restoration of Ukraine which happened after the launch of full-fledged war against Ukraine in 2022.

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