

Protection Strategy, 2019 – 2020 Humanitarian Country Team, Ukraine

PURPOSE

Recognizing the centrality of protection to the humanitarian response, the Humanitarian Country Team (HCT) in Ukraine has developed this Protection Strategy to provide a systematic framework through which it aims to bring the most urgent and severe protection risks to the forefront, and to prevent violations of human rights and international humanitarian law. This strategy builds upon the previous HCT Protection Strategy (2018-2019) which focused on three main areas¹ and seeks to build on achievements and lessons learned to continue pursuing priority protection issues.

The aim of this Protection Strategy is to support focused and targeted advocacy by the HCT on key priority areas. The strategic level engagement of the HCT will amplify and facilitate the operational work of the Protection Cluster and other advocacy efforts being carried out by humanitarian partners, who will support the operationalization of the strategy, in collaboration with humanitarian donor community.

This strategy will allow the HCT and protection partners to (i) share and utilise existing evidence base for advocacy purposes; (ii) continue building the capacity of national civil society in advocacy; and (iii) leverage complementary actions with non-humanitarian actors, such as OSCE and Council of Europe, to raise the general awareness of the crisis challenges and risks faced by the civilian population, as well as the direct impact that continuous fighting has on lives of the people.

STRATEGY AND ACTION PLAN

The HCT has undertaken an analysis of human rights and protection issues and identified seven key protection issues that it will focus on in the next two years. These are pivotal to strengthening protection in this crisis. The HCT Strategy will focus on: i) protection of civilians and civilian infrastructure from the effects of armed conflict, ii) freedom of movement, iii) humanitarian access, iv) mine action, v) internally displaced persons' (IDP) inclusion and durable solutions, vi) payment of pensions, vii) birth and death certificates.

An Action Plan will support this Strategy to cover a period of two years (2019-2020) by setting out the specific activities that will be undertaken by the HCT, with support from the HCT Protection Cluster and key stakeholders. The Action Plan will complement to the Prevention of Sexual Exploitation and Abuse (PSEA) and Accountability to Affected Population (AAP) Frameworks to reinforce the HCT's ability to address protection priorities jointly and effectively. Humanitarian Communications Sub-group will provide additional support in communicating key advocacy messages in the protection strategy.

ANALYSIS OF PROTECTION AND HUMAN RIGHTS CONCERNS

While seemingly absent from the international headlines, the conflict in eastern Ukraine continues to affect 5.2 million people. Despite ceasefire commitments, hostilities have continued for almost five years with frequent, often season-bound intensifications in fighting, leaving thousands with no other choice, but to flee to other parts of the country, facing discrimination and difficulties to cover most basic needs.

The human rights situation in Ukraine continues to be affected by a conflict fought with limited regard for the protection of the civilian population. Regular shelling and exchanges of small arms and light weapons (SALW) fire across the contact line continue to expose civilians to a **constant threat of death or injury**, and **civilian property and infrastructure** have been routinely damaged in disregard for the principles of distinction, proportionality and precautions in attack or against the effects of an attack (these are the integral parts of the conduct of hostilities obligations of the parties to the conflict).

Daily violations of the ceasefire continue to take a heavy toll on civilian lives and property as well as critical public infrastructures **providing electricity, gas and water**. The **basic human rights** of the civilian population, including rights to life, physical integrity, freedom of movement, access to basic

¹ (i) Protection of civilians from the effects of armed conflict; (ii) Support to the Government of Ukraine on complying with its international obligations vis a vis citizens living in NGCA; (iii) Provision of humanitarian assistance and basic services in line with humanitarian principles.

services, including medical care, education, water and humanitarian assistance continue to be either limited or violated throughout the conflict areas. Since the region has many heavy industries, the potential for environmental hazards could result in public health disasters or major evacuations.

Mines and unexploded ordnance (UXO) pose a significant risk to civilian life as well as rendering productive land and critical civil infrastructure unusable. An estimated two million people are affected by landmines and ERW contamination in GCA, while almost one in three households along the 'contact line' perceived these hazards in their communities². For three consecutive years, Ukraine had more anti-vehicle mine incidents than any other country in the world,³ ahead of Syria, Afghanistan and Iraq⁴. Since the start of the hostilities in 2014, over 1,000 civilians have been killed or injured by landmines and ERW⁵. Death and injury as a result of mines and ERW accounted for 65 per cent of child casualties in 2017 and 2018.⁶ Ukraine ranks amongst the top five countries for civilian casualties as a result of landmines and other explosive remnants of war (ERW). While it is difficult to estimate with certainty, at current capacity, landmine and UXO contamination may take at least a decade to clear.

The **socio-economic situation** in the conflict-affected area is deteriorating. The introduction of divisive and discriminatory legislation, policies and practices are affecting among other rights, freedom of movement and access to pension and social benefits. As a result of such policies, from 1,278,200 pensioners registered in the non-government controlled areas (NGCAs) as of 2014, only 562,000 persons received their pension in December 2018.

Coupled with the **shrinking humanitarian space, which has impacted the ability to deliver key protection assistance**, and major restrictions of the few remaining humanitarian actors to operate in the NGCAs the suffering of people is increasing. There are 12 international humanitarian organizations with presence in NGCAs, out of these only four organizations have the permission to operate in Donetsk NGCA and three in Luhansk NGCA. A handful of front-line national actors operational on the ground facilitate access to areas of high concern, however such access remains unpredictable and restricted. Lack of sustained access and permission to operate severely hinders the ability to undertake assessments⁷.

Government imposed verification requirements to receive social entitlements and pensions have resulted in a significant increase in the number of people obliged to **cross the contact line**. Checkpoints lack adequate health, sanitation and shelter facilities, with long queues forcing people to wait for hours, and sometimes even overnight, being exposed to intense heat in summer as well as snow, wind and freezing conditions in winter, risk of health issues such as heat stroke and hypothermia. These difficulties, along with frequent checkpoint closures, limited number of checkpoints – five across the 427 km contact line with only one pedestrian EECF in Luhanska oblast – in combination with the small number of staff employed to process people crossing, and the complex nature of the procedures, force people to take longer and more dangerous routes through unmarked areas, putting them at risk of mines and ERW.

In Ukraine, certain state policies weaken **social cohesion**⁸. Although, under international law, the Government of Ukraine remains beholden to its international human rights obligations towards the approximately 3 million people living in territory the Government does not control, Ukrainian policies and legislation adopted over the past five years have undermined the protection of these citizens. Persons from NGCA must stand in long queues in difficult conditions to cross the contact line through complex procedures; this makes it more difficult for them to maintain contacts with relatives, friends and institutions in GCA. Persons from NGCA must go through a judicial procedure to register births and deaths, which makes it cumbersome to establish an essential link between new-born citizens and the state, as well as to handle the painful formalities at the end of life. Persons from NGCA and IDPs experience unequal treatment in accessing their pensions. Better protection of the rights of citizens

² Humanitarian Trend Analysis in GCA 2018, REACH

³ Humanitarian and Development Impact of Anti-Vehicle Mines, GICHD, SIPRI: https://www.gichd.org/fileadmin/GICHD-resources/rec-documents/Brochure_AVM_2017_web.pdf

⁴ Geneva International Centre for Humanitarian Demining and SIPRI.

⁵ Office of the UN High Commissioner for Human Rights.

⁶ Protection Cluster "Mine Action in Ukraine" (February 2018)

⁷ Although the Multi-Sectoral Needs Assessments carried out in NGCA over the past years are important in providing an overview of the situation, there were imposed restrictions to the methodology of the assessments, restraining the scope mainly to urban centres, leaving the situation in rural areas difficult to ascertain.

⁸ According to the SCORE Index, social cohesion is defined as the "quality of coexistence between people within their own group and with the institutions that surround them." It refers to both (a) the relationships among groups in society and (b) the relationships between people and the institutions that serve them.

living in NGCA, as well as humanitarian access, would strengthen social ties and promote cohesion and future reconciliation.

PROTECTION PRIORITIES

Although the humanitarian community is working on an array of protection priorities in Ukraine, the HCT agreed to select a limited number of protection priorities on which to work jointly. In selecting the seven priorities below, the HCT has included the following considerations:

- (a) These protection issues have a major impact on large numbers of internally displaced and conflict-affected persons – the population of concern to the HCT;
- (b) The issues are cross cutting and require involvement of multiple organizations; The HCT has a reasonable possibility of achieving progress on these issues in the next two years.

I. Protection of Civilians and Civilian Infrastructure from the Effects of Armed Conflict

Violations of international humanitarian law are widespread in eastern Ukraine, and civilians are suffering as a result. Active hostilities have caused over 3,300 civilian deaths and 7,000-9,000 civilian injuries since the beginning of the conflict⁹. Involved actors in the conflict use residential areas for firing positions and use civilian property without provision of adequate alternative housing and without guaranteeing restitution and compensation for any damage or destruction to housing. Active combat in residential areas puts civilians at further risk. Civilian victims do not receive remedy and reparation for their losses¹⁰. Survivors and their families often suffer from a lack of medical care, reintegration into community and access to basic services.

Desired Outcomes:

- Parties to the conflict comply with their obligations under IHL, including on protection of civilians and civilian infrastructure.
- The Government develops a national policy framework that establishes institutional authorities and responsibilities for the protection of civilians and civilian objects in hostilities as recommended in the 2018 United Nations Secretary General's report on protection of civilians in armed conflict (S/2018/462);
- A functional legal framework is put in place to ensure protection of civilians injured as a result of hostilities.

II. Freedom of Movement

During 2018, there was a monthly average of 1.1 million crossings through the five checkpoints in Donetsk and Luhansk regions, or approximately 38,000 unique crossings daily. This is a 33 per cent increase compared to the same period of 2017, when daily crossings were at the level of 25,500. In addition, an average of 211,000 crossings occurred over the administrative boundary with the Autonomous Republic of Crimea and city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation (hereinafter 'Crimea')¹¹ each month.¹²

Desired Outcomes:

- The regulation of movement of individuals across the contact line is clear and unambiguous as to its interrelation with other existing regulations and foreseeable as to its effects to allow individuals to regulate their conduct.
- Civilians are able to cross the EECPs with any goods that are not prohibited. The list of goods prohibited for crossing is clearly specified and justified.
- Increased number of EECPs, and particularly an additional EECP in Luhanska oblast, with improved management, technical capacity, including simplified crossing procedures, availability of 24/7 administrative, legal, information on life saving services (potential) GBV survivors) and transportation at the EECPs.

⁹ From 1 January to 31 December 2018, OHCHR recorded 279 conflict-related civilian casualties: 55 killed (32 men, 15 women, 6 boys and 2 girls) and 224 injured (122 men, 70 women, 16 boys, 7 girls and 9 adults whose sex is yet unknown). This is a 53.8 per cent decrease compared with 2017, when 604 civilian casualties (117 killed and 487 injured) were recorded, and the lowest yearly civilian casualties during the entire conflict period.

¹⁰ Although, reparation is kept limited to death and personal injury. Restitution and compensation for property damage is excluded.

¹¹ As per UN GA Resolution 73/263

¹² Data is updated here monthly: <https://goo.gl/SS8gS7>

III. Humanitarian Access

Parties to the conflict have an obligation to address basic needs of civilian population, including through the efforts of humanitarian actors. To do so, humanitarian organizations must have predictable access to the affected population for the delivery of humanitarian assistance and basic services in line with the principles of humanity, neutrality, impartiality and independence.

Desired Outcomes:

- Necessary operational arrangements are in place to guarantee rapid, unimpeded and safe humanitarian access to civilians in need, including in areas beyond government control, ensuring that relief items and personnel have the freedom of movement required for their work.
- The Law “Humanitarian Assistance in Crisis Situations” developed in cooperation with humanitarian partners, including the UN, is adopted facilitating timely, predictable and quality provision of humanitarian aid in Ukraine in accordance with international norms and best practices.

IV. Mine Action

A lack of a comprehensive Mine Action law from 2014 through 2018 led to difficulties in mine action coordination. Following its adoption in December 2018 and presidential signature entry into force in January 2019, the next steps necessary on the part of the Government of Ukraine include the adoption of national Mine Action Standards (based on International Mine Action Standards), the establishment of a National Mine Action Authority and Mine Action Centre via associated legislation, the clarification of funding mechanisms for mine action operators, a scale-up in clearance, and, ideally, focus on other Mine Action pillars, especially Mine Victim Assistance, and information systems for victim data. The transition to the new system of coordination and operating standards is likely to require a period of adjustment and integration to conform to the new requirements.

Desired Outcomes:

- Implementation of the recently adopted Mine Action Law as per the recommendations provided by the humanitarian community¹³ and mine action actors in Ukraine (establishment of the National Mine Action Center, proper mechanisms for financing of mine action activities, etc.).
- Civilian population in the conflict affected regions is aware of the mine risks and knows how to behave to minimise their exposure. Significant decrease of casualties, especially amongst minors and farmers, as a result of landmine and other ERW contamination.

V. IDP Inclusion and Durable Solutions

According to the Ministry of Social Policy, there are 1,361,912 registered IDPs (as of 5 February 2019) in Ukraine. After 5 years of conflict, the number of IDPs who intend to stay in areas of displacement is rising and in 2018 for the first time has exceeded the number of IDPs who intend to return to their areas of origin: only one per cent expressed an intention to return home in the near future and 38 per cent stated that they did not plan to return home, even after the end of the conflict.¹⁴ Current policies link various rights and benefits to IDP registration¹⁵. IDPs do not have permanent residence registration in their host communities. Thus, they cannot vote in local elections and are not formally included in these communities.

Desired Outcomes:

- Normative and institutional frameworks, including laws and policies that allow IDPs and conflict affected people to rebuild their lives in accordance with fundamental standards of human rights and dignity are developed, and institutional capacity to address their protection needs is strengthened.

VI. Payment of pensions

¹³ Immediate advocacy goals include i) passing legislative amendments to create clear legal provisions with regards to direct donor funding, compensation eligibility for all victims, and State responsibilities over land release; ii) allocation of resources and development of by-laws for operationalizing institutions mandated by the Mine Action Law; and iii) ensuring unhindered operation of mine action operators under current legal framework until the new framework is completely operational.

¹⁴ Ibid.

¹⁵ In international law, internal displacement is described as a factual state and, unlike in international refugee law, there is nothing like a legal “IDP status”.

As of August 2014, 1,278,200 pensioners were registered in the NGCA. In December 2018, as reported by the Pension Fund, only 562,000 pensioners, approximately 5% of the total number of registered pensioners countrywide¹⁶, with residence registration in the NGCA continued to receive pensions. The number of persons receiving pensions has dropped sharply, by nearly 60 per cent since 2016, when restrictive government policies have played a major role in reducing access to pensions for persons from NGCA. In 2018, the number of persons receiving pensions was fluctuating from 573,900 in March to 470,000 in July and rose back to 562,000 in December. These figures demonstrate that based on verification requirements the Pension Fund continued to suspend pensions of IDP-pensioners, who were suspected of not residing permanently in the GCA.

Desired Outcomes:

- Adoption of the necessary legal framework to enable all Ukrainian citizens residing in the NGCA to access their pensions without the needs to register as IDPs and regardless as to the place of their residence.
- Resuming payment of pensions to all individuals irrespective of their place of residence de-linking the payment of pensions from IDP registration. Procedures regulating access to pensions to IDPs should be the same as for non-displaced citizens of Ukraine. Establishing a procedure to pay pensions that have accumulated in arrears, including the necessary allocation in the state budget.

VII. Birth and Death Certificates

A review of the 2016-2018 court records suggests that an estimated 44% of children reported to have been born in Donetsk and Luhansk NGCAs and around 11% in 'Crimea' have obtained birth certificates issued by the Government of Ukraine. In the first half of 2018, Ukraine took the first steps towards establishing an administrative procedure for birth registration of children born in NGCA¹⁷. The recently adopted Law¹⁸ reaffirms the invalidity of all documents issued by the de facto entities in NGCAs but introduces an exception for "documents certifying facts of birth or death of a person". These documents may be attached to applications for birth/death registration by a civil registry office in Ukraine. However, this exception is introduced only for documents issued in Donetsk and Luhansk NGCAs, and not in 'Crimea'. The Government is yet to establish a procedure to ensure implementation of this provision.

Desired Outcomes:

- Establishing an administrative procedure for birth registration that is responsive to the circumstances of families living in NGCA and in 'Crimea'
- Civil registration system is in line with national and international standards and is accessible to all within the territorial integrity of Ukraine, without discrimination of any kind, and free of charge.

5. MONITORING and REPORTING

The HCT will report against the priorities of the HCT Protection Strategy every four months, to ensure it fully corresponds to the evolving situation. The HCT will report on overall results and achievements reached jointly and will not monitor individual agency activities.

This HCT Protection Strategy including Annex is a living document and therefore subject to revisions and updates, based on the possible developments and changes in the operational context.

The HCT Protection Strategy Working Group, the body that was created by the HCT to develop and drive the strategy forward, will convene to assess the relevance of the document on ad-hoc basis, to inform the HCT on the need of possible revisions or updates of the identified plan of action. Considering that strategic-level advocacy is the focus of the HCT Protection Strategy, regular reviews will be conducted in close consultations with the donor community during the expanded HCT meetings.

¹⁶ Ukraine Pension Fund

¹⁷ A judicial procedure does exist in Ukraine that allows children from NGCA to obtain birth certificates, the steps are cumbersome and expensive, especially for vulnerable families. A procedure entailing medical verification of births by special commissions with the involvement of international humanitarian organisations, which allows for deployment of specialists to NGCA, currently exists only on paper and would nevertheless appear to be lengthy and difficult to implement.

¹⁸ On 18 January 2018, Parliament adopted Law no. 2268 "On particular aspects of public policy aimed at safeguarding state sovereignty of Ukraine over the temporarily occupied territory of Donetsk and Luhansk regions".