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HUMANITARIAN ACCESS IN EASTERN UKRAINE: AN OVERVIEW

Kyiv 2019

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Imperative: Even without delving into the context of the Ukrainian armed conflict, it is evident that the situation with humanitarian access at the beginning of 2019 is fundamentally different from the one observed in 2014-2015. Of course, this is due to both the dynamics of the conflict and the intensity of confrontations, political and diplomatic achievements, the formation of a provisional line of contact and the establishment of control over certain areas by one of the parties to the conflict, as well as with the establishment of a humanitarian framework. That is, in the development of the conflict and by gaining experience in responding to the related extraordinary events, in the specific field conditions, all the response actors (including relevant government agencies, armed forces, law enforcement agencies, local self-government bodies, international humanitarian organizations, national NGOs, volunteer associations and civil society institutions) have developed, adapted and implemented a number of rules and mechanisms, which undoubtedly has had a positive impact on the speed and adequacy of responding to consequences of the conflict.

However, the **3.5 million people** in need of assistance¹ as of **the beginning of 2019** and the ongoing armed conflict indicate that it is necessary to improve the system of humanitarian response further. Evaluations of the events in the East of Ukraine given by international partners support this statement. For example, in its joint press statement following the 5th meeting of the Association Council between Ukraine and the EU dated December 17, 2018², the Council *«condemned in the strongest terms the continued indiscriminate shelling of residential areas and critical civilian infrastructure. The Association Council agreed on the need of all sides to withdraw and permanently store all Minsk-proscribed weapons and disengage their forces from the line of contact. [...] The Association Council noted with concern the deteriorating humanitarian situation in the conflict area. The Association Council condemned the deteriorating human rights situation in the non-government controlled areas of the Donetsk and Luhansk regions. The EU recalled its readiness to play an important role in reconstruction efforts. The Association Council acknowledged the need for maintenance of socio-economic ties between areas not currently under the control of the government and the rest of Ukraine, to protect the supply of water, energy and other utilities across the contact line, mitigate environmental risks, notably by creating safety zones around critical civilian infrastructure and by facilitating movement of people and goods.»*

The Parliamentary Assembly of the Council of Europe in its Resolution 2198 dated January 23, 2018 on the humanitarian consequences of the war in Ukraine³ identified problems in the area of access of conflict-affected persons to water and energy supplies, social benefits and medical care. This is due to the steady deterioration of the humanitarian situation in the occupied territories of Donetsk and Luhansk regions. In view of the Law «On the Peculiarities of the State Policy to Ensure the State Sovereignty of Ukraine over the Temporarily Occupied Territories in Donetsk and Luhansk Regions», PACE called on the Ukrainian authorities *«to revise the said law, based on the Minsk Agreements, and fully guarantee the social protection and meet basic humanitarian needs for the civilian population in the temporarily occupied territories of Donetsk and Luhansk regions (paragraphs 3 and 11.4).»* Charitable Foundation «Right to Protection», analyzing the text of the draft law prior to its adoption, emphasized that the proposed introduction of certain restrictions provided for thereby could lead to a sharp decrease in the number of civic organizations as well as international intergovernmental and non-governmental organizations working in the conflict zone and in the so-called «grey zone», and hence – to a reduction in the volume of humanitarian assistance and services available to the inhabitants of these territories⁴.

The PACE resolution also contains a number of appeals to the Ukrainian authorities, including *«revision of the law on humanitarian assistance to facilitate delivery of humanitarian assistance to conflict-affected territories (paragraph 11.6).»*

The purpose of this study was to show the actual situation with humanitarian access in Donetsk and Luhansk regions, assess the effectiveness of the efforts of humanitarian actors, and the practical implementation of the procedures and mechanisms for improving the access of affected persons to humanitarian assistance. This report is supposed to provide the basis and evidence for advocating further improvement of these procedures and mechanisms.

¹ According to UN OCHA estimate, provided in the Humanitarian Response Plan for 2019-2020: https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2019_humanitarian_response_plan_en.pdf

² <https://www.consilium.europa.eu/en/press/press-releases/2018/12/17/joint-press-statement-following-the-5th-association-council-meeting-between-the-european-union-and-ukraine/>

³ <https://rm.coe.int/-2198-2018-/1680785d74>

⁴ <http://vpl.com.ua/uk/news/4319/>

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ACRONYMS

Terms and abbreviations herein are used with the following meaning:

AFU	Armed Forces of Ukraine
ATO	Anti-Terrorist Operation
CMCoord	OCHA civil-military coordination mechanism
CIMIC	Civil-Military Cooperation
CMA	Civil-Military Administration
IHL	International humanitarian law
ICL	International criminal law
IHRL	International human rights law
IDPs	Internally displaced persons
JFO	Joint Forces Operation
LoC	Line of contact
(N)GCA	Territory of Donetsk and Luhansk regions (un)controlled by the Government of Ukraine («Non-Government Controlled Areas»)
NGOs	Non-governmental organizations
NSAGs	Non-state armed groups
NATO	North Atlantic Treaty Organization
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
PACE	Parliamentary Assembly of the Council of Europe
UN	United Nations
UNMM	UN Monitoring Mission

The monitoring of the situation with humanitarian access in Donetsk and Luhansk regions was carried out by the CF «Right to Protection» as part of the project Providing Diversified Humanitarian Assistance to the Conflict-Affected Population of Eastern Ukraine, implemented by the Charitable Foundation «Right to Protection» with the financial support of the European Commission as part of civil protection and humanitarian aid of the European Union within the consortium ACCESS in order to analyse the existing legal mechanisms for the coordination of the work of humanitarian organizations, as well as the collection of evidence and the development of recommendations for eliminating or mitigating risks improving the procedures for ensuring access of humanitarian organizations to beneficiaries with a view to needs evaluation, provision of humanitarian assistance; access of relevant services and humanitarian organizations to infrastructure affected by the conflict, and access of the population to humanitarian assistance. The geography of the study covers the territory of Donetsk and Luhansk regions under the control of the Government of Ukraine. With regard to the uncontrolled territories, this study, for obvious reasons, does not provide as deep an analysis of the regulation, procedures and their practical implementation for the uncontrolled territories. Instead, a brief overview of the situation with access of humanitarian organizations to the NGCA will be provided.

THE CONCEPT AND GENERAL PRINCIPLES OF HUMANITARIAN ACCESS IN ACCORDANCE WITH INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW

The concept of humanitarian access

Neither national legislation, nor the provisions of international humanitarian law contain a single clear definition of the concept of humanitarian access. However, in its practice, the UN Office for the Coordination of Humanitarian Affairs («OCHA»), the United Nations agency focusing on strengthening the response to humanitarian crises⁵, and the Protection Cluster⁶ define humanitarian access through two key components:

- the possibility for humanitarian actors (humanitarian assistance providers) to have rapid, direct access to recipients of assistance, including physical access to the location where the affected population stays, the possibility to assess needs, the distribution of assistance and the collection of information on its efficiency.
- access of affected people to humanitarian assistance and services. The handbook «Humanitarian Access in Situations of Armed Conflict» published jointly by the Swiss Federal Department of Foreign Affairs, the UN Office for the Coordination of Humanitarian Affairs and Conflict Dynamics International⁷ defines *humanitarian access as: access of humanitarian organizations to people in need of assistance and protection, and access by those in need to the goods and services essential for their survival and health, in a manner consistent with core humanitarian principles.*

Humanitarian access entails not only the provision of necessary assistance to the affected population, but also the provision and support of relevant activities throughout the crisis period, that is, the provision of assistance as long as there is a need for it. Hence, humanitarian access includes a set of measures, coordinated actions and efforts of donors and recipients aimed at overcoming the crisis.

⁵ <https://www.humanitarianresponse.info/ru/operations/ukraine/office/un-ocha-ukraine>

⁶ <http://www.globalprotectioncluster.org/field-support/field-protection-clusters/ukraine/>

⁷ https://reliefweb.int/sites/reliefweb.int/files/resources/CDI_Access_Manual_Web_Dec5_0.pdf

Humanitarian principles and their reflection in IHL

IHL provides for minimum requirements and conditions for humanitarian access, as well as obligations of the parties to a conflict and other actors responding to a humanitarian crisis. Humanitarian principles are the basis of the international regulatory framework in this area. Humanitarian access will be sustainable and efficient only when it is based on these principles. That is, the assistance is provided on the basis of neutrality, impartiality, independence, and is needs-based, when it does not pursue any aim other than humanitarian.

The four key humanitarian principles are included in the seven fundamental principles guiding all activities of the Red Cross and Red Crescent movement⁸ and have been adopted by the United Nations in General Assembly Resolutions 46/182⁹ and 58/114¹⁰. They are defined as follows:



HUMANITY:

humanitarian activity is intended to alleviate the suffering of people wherever they are. The purpose of humanitarian activity is to protect life, health and dignity of people.



IMPARTIALITY

means that humanitarian activities are based solely on need, with priority given to the most urgent cases, regardless of race, nationality, gender, religious beliefs, political opinions or class.



NEUTRALITY:

Humanitarian organizations must not take any side in armed conflicts or enter into political, racial, religious or ideological controversies.



INDEPENDENCE

requires the autonomy of humanitarian organizations that are not subject to political, economic, military or other non-humanitarian purposes.

In addition to these four principles, the humanitarian community uses the «no harm» principle, which is complementary to the others and guides the approach to humanitarian activity. It consists in a thorough and weighted analysis of all factors that can influence further developments and the situation of persons of concern in order to avoid or at least mitigate the risk of a negative impact from humanitarian assistance.

⁸ <http://www.ifrc.org/who-we-are/vision-and-mission/the-seven-fundamental-principles/>

⁹ A/RES/46/182- December 19, 1991: Humanitarian assistance shall be provided in accordance with the principles of humanity, neutrality and impartiality.

¹⁰ A/RES/58/114- February 5, 2004: Recognizing that independence, which means the independent determination of humanitarian goals, without taking into account the political, economic, military or other objectives that one or another party may have in areas where humanitarian activities are carried out, is also an important guideline for the provision of humanitarian assistance.

INTERNATIONAL LAW: REVIEW

The principles of protection of the civilian population and provision of humanitarian assistance are established by the provisions of international humanitarian law, international human rights law, international criminal law and customary IHL.

IHL determines the main principles of humanitarian access and obligations of the parties, depending on the type of conflict, differentiating between the situations of international armed conflict, occupation and non-international armed conflict with the participation of non-state armed groups (“NSAGs”). For the purposes of this study, we will refer to non-international armed conflicts, as, despite the provisions on the armed aggression of the RF and the occupation of certain areas of Donetsk and Luhansk regions that are set forth in national legislation, and unlike the situation in the ARC, the occupation has not been recognized by the international community as an international armed conflict.

It is common to both situations of international and non-international armed conflict that the parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control. This obligation is in line with the current duties of the parties to the conflict regarding the observance of human rights.¹¹

It is also worth noting that although non-state armed groups may not be parties to international treaties, the provisions of IHL apply in case of internal conflicts both to governments and to NSAGs. Moreover, even if a state party to an armed conflict is not a signatory to certain treaties, all parties to armed conflicts are subject to the rules of customary IHL.

The standards of ensuring access are reflected in the four Geneva Conventions of 1949 and two Additional Protocols to the Geneva Conventions of 1977.

Article 3 (also known as Common Article 3) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 establishes the obligations of the parties in the event of an armed conflict, which is not international in nature (*«Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat'* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.»*). It also states that *«An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.»*¹²

The Additional Protocol to the Geneva Conventions of August 12, 1949, concerning the Protection of Victims of Non-International Armed Conflict (Protocol II), dated June 8, 1977,¹³ specifies the list of individuals and objects under the protection of the Convention, including: the sick and wounded (Article 7), medical and religious personnel and persons carrying out medical activities, as well as medical units and transports (Articles 9-11), the civilian population (Article 13), objects indispensable to the survival of the civilian population (Article 14), works and installations containing dangerous forces (Article 15), as well as cultural heritage and places of worship (Article 16).

Paragraph 2 of Article 18 of Protocol II directly establishes the obligation of the parties to ensure access of the affected population to humanitarian assistance:

«If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.»

¹¹ ICRC Study on Customary International Humanitarian Law, Rule 55

¹² https://zakon.rada.gov.ua/laws/show/995_154

* Hors de combat – out of combat (fr)

¹³ https://zakon.rada.gov.ua/laws/show/995_200

International human rights law (IHRL)

International human rights law is always applicable, including in situations of armed conflict, along with IHL and ICL. In exceptional cases, the state may derogate from its obligations to fully respect human rights for a specified period of time.¹⁴ Ukraine used this right in 2015.¹⁵

IHRL does not directly address the issue of humanitarian access, however, it indirectly creates the legal basis for the establishment of fundamental rights such as the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the right to food, the right to water, the right to health, the right to housing and the principle of non-discrimination.

Thus, there is a direct close link between humanitarian access and the exercise of fundamental human rights in an armed conflict.

International criminal law

ICL recognizes certain acts or behaviour violating human rights and the rules of warfare as criminal and entailing responsibility under the rules of the ICL.

In particular, Article 8 (paragraph 2(e) of the Rome Statute¹⁶ lists the types of activities which are considered war crimes, including «*iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict*».

It should be noted that the Rome Statute has not yet been ratified by Ukraine, and its provisions are not reflected in national legislation.

¹⁴ International Covenant on Civil and Political Rights (ICCPR) (1966), Art. 4; European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (1950), Art. 15. Derogation clauses aim at striking a balance between protection of individual human rights and the protection of national needs in times of crisis by placing reasonable limits on emergency powers.

¹⁵ <https://zakon.rada.gov.ua/laws/show/462-19>

¹⁶ https://zakon.rada.gov.ua/laws/show/995_588

CONTEXT AND CHALLENGES IN UKRAINE

As noted above, in spite of the relevant provisions of national legislation, events in the East of Ukraine are not recognized by the international community as an international armed conflict. One of its main features is prolonged active armed confrontation that has not stopped since the beginning of the conflict in 2014. The intensity and negative impact of combat operations are many times less than those observed in 2014-2015, which became possible, in particular, due to a shift in the process of political settlement of the conflict and the reaching of the Minsk Agreements. Nevertheless, cases of use of weapons are recorded daily along the entire line of contact, which is over 400 km long. The threat to life and health, the disturbed infrastructure and economy of some districts, as well as the lack of access to state and social services has forced more than 1.5 million people to move within the country. Even the mobile population who has moved to a safer place needs humanitarian assistance because of the shortcomings of the state policy on IDPs. At the same time, most of the civilian population in need of humanitarian assistance continue to live in areas suffering from the negative consequences of the continuing conflict.¹⁷

THE FOLLOWING FACTORS CREATE SERIOUS CHALLENGES FOR RESPONDING TO THE HUMANITARIAN CRISIS IN TERMS OF ACCESS:

Despite the rapid deployment of the UN response system in Ukraine, the launch of missions of other global humanitarian organizations and international institutions, attraction of significant funding, and the many years of experience of these organizations in responding to humanitarian crises caused by the armed conflict, the nature of this conflict itself, the peculiarities of the locality, the climate, the size of the population and diverse demographic/social composition of the population affected create serious challenges for humanitarian access

The conflict, which, according to international law, is internal in nature and involves NSAGs (see above), who control access of the population living in the territories under their control to humanitarian assistance as they see fit

Anti-terrorism legislation, which is in force in parallel with the special law governing the conduct of the Joint Forces military operation, as well as the Government's regulatory policy and bureaucratic procedures that create additional restrictions for access of assistance providers to the affected population and territories

A large number of international and national humanitarian actors in different spheres, which causes duplication of functions and the need to enhance the interaction/coverage of all by a single coordination mechanism

The peculiarities of physical access and security of humanitarian workers, which are complicated by disturbed transportation infrastructure, as well as the high level of mine contamination.¹⁸

¹⁷ For more details, see Humanitarian Needs Review 2019: https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2019_humanitarian_needs_overview_en.pdf

¹⁸ Advocacy Note on Mine Action in Ukraine by Protection Cluster <https://bit.ly/2WbtwZ>

ANALYSIS OF NATIONAL LEGISLATION

One of the particularities of national legislation, which affects the situation with humanitarian access, is the complexity of its structure and the inconsistency of individual provisions. Thus, legally the events in the East of Ukraine were initially determined as the anti-terrorist operation (ATO).¹⁹ From April 30, 2018, the ATO, in accordance with the Law of Ukraine «On the Peculiarities of the State Policy to Ensure the State Sovereignty of Ukraine over the Temporarily Occupied Territories in Donetsk and Luhansk Regions» was reformatted as the joint forces operation (JFO), changing the nature of the military operation, leadership, the scope of powers and responsibilities of the actors and the modes of access to certain territories. However, the legislation on JFO is in force alongside the ATO Law, which has not been abolished. Such uncertainty creates a situation in which it is impossible to get a clear answer to the question of whether the ATO is considered complete. Thus, at the request of the CF «Right to Protection», representatives of different authorities gave different answers: that the ATO continues along with the JFO, that the ATO is completed and that the ATO continues in a new format – a large-scale anti-terrorist operation (LSATO). This inconsistency of the regulatory framework affects a number of legal relationships that are regulated differently by the relevant legislation and may accordingly influence the protection of the conflict-affected civilian population.

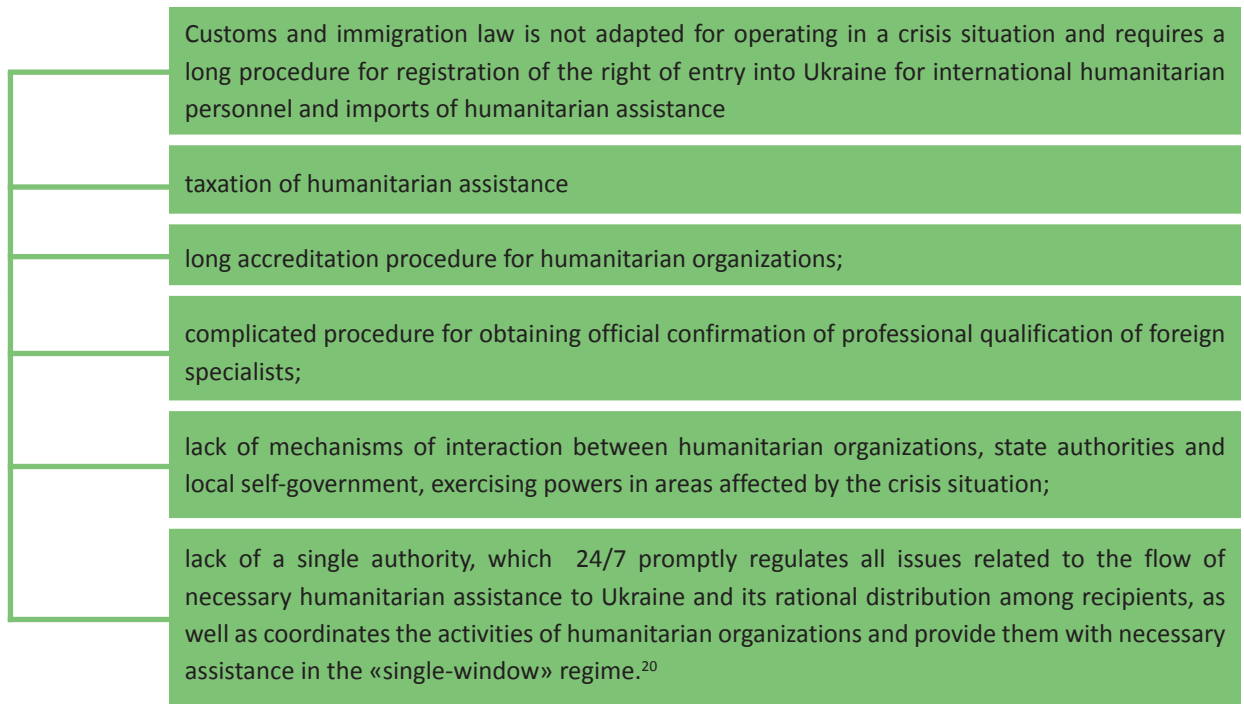
The **Law of Ukraine «On Humanitarian Assistance»**, valid as of the beginning of 2019, was adopted in 1999 and did not take into account a number of peculiarities of the situation of the armed conflict and, as a result, a humanitarian crisis of such magnitude that was triggered by the armed conflict in the East of Ukraine. Since the beginning of the conflict, a number of changes have been introduced to this law, but international humanitarian organizations continue to face difficulties due to regulatory shortcomings in some aspects of bringing in humanitarian assistance, personnel placement, obtaining permits, and passing through control procedures.

Then again, issues of humanitarian access are directly regulated by the following regulatory acts:

- Laws of Ukraine: «On Humanitarian Assistance», «On the Peculiarities of the State Policy to Ensure the State Sovereignty of Ukraine over the Temporarily Occupied Territories in Donetsk and Luhansk Regions», «On the Legal Status of the Martial Law (for the period of its effect)»,
- Cabinet of Ministers of Ukraine Resolution No. 99 «On Approval of the Procedure for the Movement of Goods to the Area or from the Area of Anti-Terrorist Operation (in effect at least until the adoption of the new procedure by the CMU), which regulates the movement of humanitarian goods through the line of contact.

¹⁹ <https://zakon.rada.gov.ua/laws/show/1669-18>

AMONG THE MAIN SHORTCOMINGS OF THE CURRENT LEGAL REGULATION, THE FOLLOWING ARE ESPECIALLY NOTABLE:



In order to resolve these issues, the draft law «On Humanitarian Assistance in Crisis Situations»²¹ was registered in the Verkhovna Rada of Ukraine as early as April 2016, as well as proposals for amendments to the Customs and Tax Codes. However, as of the beginning of 2019, the prospects for such changes are still uncertain.

The key legal act regulating the access to areas of the JFO is **the Law of Ukraine «On the Peculiarities of the State Policy to Ensure the State Sovereignty of Ukraine over the Temporarily Occupied Territories in Donetsk and Luhansk Regions»**, which entered into force on February 24, 2018.

From the moment of its publication, the draft Law has caused serious concern to NGOs²² since it provides too broad powers to law enforcement agencies, effectively introduced martial law in contravention of the relevant procedure, while not containing provisions on the proportional protection of the civilian population and humanitarian assistance providers, as well as other actors in the response to the humanitarian crisis²³. It should be noted that the text of the draft law in its first version not only caused distrust of the NGOs, but also provoked a serious political debate. After a few months, a compromise version of the law was adopted, which nevertheless still contains a number of provisions that do not meet the goal and priority of human rights protection and threaten the sustainable and secure access of humanitarian assistance providers to the affected population.

The law provides a wide range of powers to one person, the Joint Forces Commander, which creates corruption risks. In particular, the JF Commander alone decides whether to restrict the entry and stay of persons in the area of the JFO. At the same time, the law does not provide a clear and exhaustive list of grounds for making these decisions, which allows for possible major corruption risks.

The law also introduces several terms, with no definitions given in this or other laws, including «security zones», «borders of security zones», «law enforcement special-purpose agencies», and «legal requirements of officials».

Security zones, their borders and access regime shall be determined by the decisions of the JF Commander. Access to the NGCA is possible subject to special permission.

²⁰ <http://www.ufb.org.ua/news.htm?id=4660>

²¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=58615

²² Petition of the NGOs to the President of Ukraine regarding the draft Law: <http://vpl.com.ua/en/news/4278/>

²³ <http://vpl.com.ua/uk/media-about-us/4249/>

The law also provides an extremely wide range of powers to the military and law enforcement agencies and does not provide explicit grounds for the exercise of these powers, which creates a risk of abuse, as well as risks to the protection of humanitarian organizations' property, and the personal data of humanitarian organizations representatives and recipients of assistance. In particular, Article 12 of the law provides that *«in order to ensure vital interests of the society and the state when repulsing armed aggression in the security zones adjacent to the combat zone, servicemen, law enforcement officers and persons identified in Article 8 of this Law involved in the implementation of measures to ensure national security and defence, repulsion and deterrence of armed aggression in Donetsk and Luhansk regions in accordance with the Constitution and laws of Ukraine have the right to:*

1) apply, in case of emergency, weapons and special means to persons who have committed or are committing an offence or other actions that impede the fulfilment of the legal requirements of persons involved in the implementation of measures to ensure national security and defence, repulsion and deterrence of the armed aggression of the Russian Federation in Donetsk and Luhansk regions, or actions connected with the unauthorized attempt to penetrate the area of implementation of the said measures; [...]

5) temporarily restrict or prohibit the movement of vehicles and pedestrians on the streets and roads, prevent access of vehicles, citizens to separate areas and facilities, withdraw citizens from separate areas and facilities, tow vehicles;

6) enter (penetrate) residential and other premises, on the land plots owned by citizens, in the territory and in the premises of enterprises, institutions and organizations, inspect vehicles for the implementation of measures to ensure national security and defence, repulsion and deterrence of armed aggression of the Russian Federation in Donetsk and Luhansk regions;

7) use, for official purposes, communication facilities and means of transport, including special ones owned by citizens (with their consent), enterprises, institutions and organizations, except vehicles of diplomatic, consular and other representations of foreign states and international organizations.»

Particularly vulnerable in this situation is the position of national NGOs and humanitarian organizations that do not have international status and the corresponding protection.

In addition, the Law actually creates a new procedure for the introduction of a martial law regime, which gives wider powers to the President as Supreme Commander-in-Chief in accordance with Part 2 of Article 13 of the Law.²⁴

For the first time in the history of Ukraine, martial law was introduced on November 26, 2018. The reason was the attack of Russian ships on three Ukrainian military boats in the Kerch Strait and the detention of Ukrainian servicemen.

After a meeting of the War Cabinet and the National Security and Defence Council, the President of Ukraine submitted a corresponding proposal to the Verkhovna Rada. The martial law was in effect in ten regions of Ukraine until December 26, 2018. Despite the serious risks of limiting the right to freedom of movement, other rights and freedoms of citizens, as well as legal entities, according to field studies (see below), the imposition of martial law did not seriously affect the work of humanitarian organizations and the situation of recipients of assistance.

²⁴ <https://zakon.rada.gov.ua/laws/show/2268-19>

COORDINATION AND COOPERATION

One of the most important factors in the effectiveness of the humanitarian response and the provision of humanitarian access is coordination. This coordination can be thought of as having two components. The first is humanitarian coordination, that is, coordination of actions, information exchange and cooperation of humanitarian assistance providers among themselves and with recipients of such assistance. The second is civil and military coordination, that is, coordination of access regimes, rules for movement in areas under control of the military, procedures and information exchange for the safety of the civilian population and humanitarian workers.

In Ukraine, from the beginning of the conflict a **cluster system** was deployed to respond to the resulting humanitarian crisis.²⁵ At the present, there are 7 clusters (for Protection; Health and Nutrition; Food Security and Livelihoods; Water, Sanitation and Hygiene; Education; Shelter/Non-Food Items; as well as Logistics), which include sub-clusters and thematic working groups. Most humanitarian assistance providers – are involved in their work.

The United Nations Office for the Coordination of Humanitarian Affairs has provided overall coordination of humanitarian affairs since 2015. OCHA implements a **civil-military coordination mechanism (CMCoord)**, which is currently one of the key tools for ensuring humanitarian access. Its task is to establish and maintain a dialogue with the military and other armed forces, including the NSAGs, which includes the development of specific mechanisms and the promotion of a principled approach to cooperation with the military.

CMCoord promotes co-operation and coordination between humanitarian actors; ensures their communication and coordination with the command of the JFO, other military formations, law enforcement agencies; exchange of information; trains the personnel of the Armed Forces and other law enforcement agencies as well as humanitarian workers; supports the mechanism for notifications of the movement of humanitarian workers and transport in the JFO area; and promotes the provision of humanitarian access.

In the section on field studies results, some evaluations of this mechanism by humanitarian actors and community representatives who need humanitarian assistance will be provided. However, we can confidently state the high level of efficiency of CMCoord in Ukraine, through which humanitarian response to emergencies and individual incidents is carried out within the first few critical hours. For example, on February 14, 46 people were in the so-called «grey zone» between the checkpoints of the first line at Maiorske EECP after the close of the checkpoint.²⁶ Due to the established communication system, all relevant structures and humanitarian actors were immediately notified of the incident and went into standby mode. For 4.5 hours, people were able to proceed to the government-controlled area and those in need obtained the necessary assistance (medical, transport, water, hot drinks and food). In addition, another important function of CMCoord is to promptly inform partners about the introduction of the «red» regime by the JFO Commander, that is, threats to security and restrictions on the movement of humanitarian workers. Today, such notifications are carried out in record time (up to 15 minutes).



«Maiorske» EECP, State Emergency Service of Ukraine, the point of assistance

²⁵ <https://www.humanitarianresponse.info/ru/coordination/clusters>

²⁶ <https://hromadske.ua/posts/na-kppv-majorsk-blizko-50-lyudej-zastryagli-mizh-blokpostami>

In May 2014, the Ministry of Defence of Ukraine launched a pilot project Civil-Military Cooperation (CIMIC). On the CIMIC's official website²⁷ the following definition is given:

Civil-military cooperation is a systematic planned activity of the Armed Forces of Ukraine, other military formations and law-enforcement bodies established in accordance with the laws of Ukraine (hereinafter - the Armed Forces of Ukraine) for coordination and interaction with executive authorities, local self-government bodies, public associations, organizations and citizens in the areas of deployment of military units and subunits of the Armed Forces of Ukraine with the purpose of shaping positive public opinion and providing favourable conditions for the Armed Forces of Ukraine to perform the tasks and functions by assisting the civilian population in solving problems of life with the use of military and non-military forces and means.

In 2015, the implementation of the system of civil-military cooperation as part of the general structure of the Armed Forces of Ukraine in the ATO areas in Donetsk and Luhansk regions was started in accordance with NATO standards.

THE TASKS OF THE CIMIC INCLUDE

Organization of providing assistance to local authorities and residents of settlements in Donetsk and Luhansk regions, and for this purpose, holding regular coordination meetings with the participation of representatives of communities, local authorities and self-government

Assistance in the collection and delivery of humanitarian assistance

Support for the restoration of infrastructure (power grids, gas pipelines and water supply systems), housing, municipal facilities

Collection of information about the population's needs

Implementation of mine security and humanitarian demining in the ATO areas in Donetsk and Luhansk regions with the International Committee of the Red Cross, the Danish Demining Group and the HALO Trust humanitarian organization

INTERNATIONAL STANDARDS IN THE ARMED FORCES OF UKRAINE

The political aspect is also important in the context of ensuring the security of humanitarian organizations, their access to affected individuals and facilities, as well as access of the population to humanitarian assistance. Thus, as part of the course of pro-Western European integration, as well as Ukraine's intention to accede to NATO, NATO standards (STANAGs),²⁸ and international Mine Action Standards (IMAS) are being implemented.²⁹ Although their provisions are primarily oriented towards the achievement of military objectives, they take into account the principles of protecting civilians, humanitarian workers and facilities that are subject to protection in accordance with IHL standards, contribute to reducing the risks to the civilian population and, thus, to improving the situation with humanitarian access.

²⁷ <http://cimic.com.ua>

²⁸ More about the implementation of Standards in the Armed Forces of Ukraine: <http://www.mil.gov.ua/ministry/normativno-pravova-baza/stanag.html>

²⁹ <http://www.mil.gov.ua/ministry/normativno-pravova-baza/standarti.html>

IN PRACTICE

In order to collect data on the implementation of the above-mentioned provisions, as well as to analyse the effectiveness of the coordination mechanisms, the CF «Right to Protection» conducted consultations and interviews with representatives of the organizations providing humanitarian assistance and representatives of communities which were affected by the conflict and are recipients of such assistance.

It should be noted that the first phase of field studies (survey of the workers of humanitarian organizations) coincided with the introduction of martial law in December 2018. Immediately after the end of martial law, representatives of communities that are in need and are recipients of humanitarian assistance were interviewed along the line of contact (LoC). Thus, monitors of the CF «Right to Protection» were able to determine whether the introduction of martial law had influenced these individuals' interaction with humanitarian assistance providers and other humanitarian actors, whether the access regime had changed, and whether there had been any other difficulties in the operations of humanitarian organizations in connection with the introduction of martial law.

As part of the first phase of the study, interviews were conducted with representatives of several humanitarian organizations that provide assistance to IDPs and the conflict-affected population along the LoC in the government-controlled area. Interviews were conducted to systemize information about the experience of various organizations, their assessment of the situation, concerns, difficulties and recommendations on operational field activities, access procedures and the effectiveness of the mechanisms for coordinating the activities of humanitarian organizations and civil-military cooperation.

A total of 11 interviews were conducted with representatives of national and international organizations that operate in the government-controlled area. Respondents were selected from a pool of organizations that are physically present and provide assistance in Donetsk and Luhansk regions, provide data on their activities to relevant clusters, and participate in coordination meetings at the regional level. Heads of field offices, project managers, heads of field actions were asked to answer a number of questions related to their experience of work in conflict situations, the difficulties and limitations of access, and their assessment of the effectiveness of humanitarian coordination mechanisms. Unfortunately, among the organizations that agreed to participate, there are none who have field offices in the NGCA, but some of them try to obtain information on the situation of beneficiaries in the NGCA and assess their needs in order to provide comprehensive assistance upon the arrival of beneficiaries to the government-controlled area to obtain such assistance.

The organizations that participated in the survey are present in one or both regions (Donetsk and Luhansk), and provide the following types of assistance:

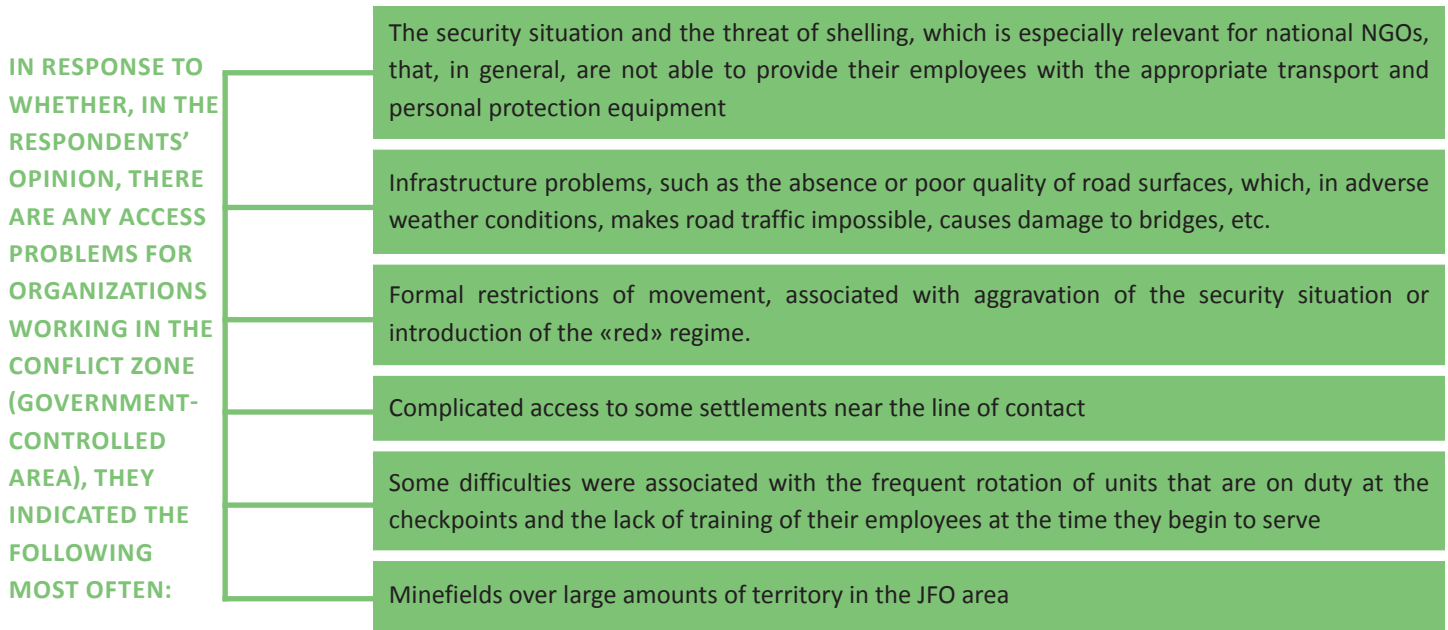
- | | | | |
|---|--|---|--|
|  | • Information / consulting / legal aid |  | • Food and livelihoods |
|  | • Social services and support |  | • Medical services |
|  | • Cash assistance |  | • Civil infrastructure (water supply, medical care) restoration projects |
|  | • Psychosocial support |  | • Projects of development and support of communities, local authorities |
|  | • Non-food products, fuel (firewood, coal) | | |

Only two respondents reported difficulties with access from their own experience. In one case, the described situations were repeated many times before 2017. The second organization faced such a situation at least once in 2018. In both cases, the difficulties were connected with crossing second-line checkpoints. The problems were related to the lack of awareness of the police and other agencies on duty at the checkpoints about the humanitarian organizations present in their area of responsibility and their activities; as well as their requests to provide documents not provided for by law as grounds for admission through checkpoints. It should be noted that employees of the Charitable Foundation «Right to Protection» also experienced such problems in 2015-2017. Because of a

large number of reports of similar incidents in 2015-2016, OCHA developed a directory for law enforcement agencies that provides information on the activities of all humanitarian organizations that wished to be included, the types of assistance they provide, the status of the organization, and its identification marks (emblems, logos). These directories were distributed among all departments serving in the respective areas. Each checkpoint has a copy in order for the person executing checks to quickly identify the transport and staff of humanitarian organizations and facilitate their unrestricted movement.

One of the organizations reported the desire to work in the NGCA and the inability to do so due to the difficulty of obtaining accreditation from the de facto administrations of the NGCA.

All respondents unequivocally view the existing mechanisms of humanitarian coordination (CMCoord, CMS, general coordination meetings, notification procedure) as effective. In one case, the representative of an organization which operates in both regions noted that, in his organization's experience, these mechanisms are more effective in Luhansk region than in Donetsk region. This shows the importance of attracting and engaging the representatives of local authorities and local self-government bodies in the process of humanitarian coordination.



It is worth noting separately that none of the respondents reported changes in access regime or other issues related to martial law during November-December 2018. As noted above, the martial law regime envisaged the possibility of introducing restrictions on movement and stay of persons in certain areas, detention of persons, carrying out personal inspections and inspections of transport, access of law enforcement officers to premises occupied by humanitarian organizations, introduction of curfew, etc. However, the aggravation of military confrontation or aggressive actions by NSAGs should have been the grounds for introducing such restrictions, which did not take place during the period of martial law.

The respondents provided the following recommendations for improving access and improving the efficiency of cooperation:

- Advocating for the simplification of the procedure for obtaining accreditation in the NGCA at the diplomatic level
- Informing servicemen and law enforcement officers about current legislation and promptly informing them about changes to the relevant procedures; conducting trainings and instructional events on humanitarian standards, international humanitarian law provisions and coordination mechanisms
- Demining operations
- Restoration of roads, limiting the movement of heavy military equipment by motor road

At the second stage of field studies, information was collected from communities along the line of contact that are recipients of humanitarian assistance. Based on the data of the regular monitoring of the CF «Right to Protection», settlements were selected that are located near the line of contact and where there are (or were earlier during an armed conflict) restrictions on freedom of movement, including access of humanitarian aid providers to these settlements. For each settlement, individuals were identified who were/are actively involved in the coordination and delivery of humanitarian assistance, have a strong connection with the community and can represent their interests. In some cases, they were representatives of local self-government bodies, civil-military administrations, –or local volunteers and activists. They were invited to take part in an interview to study trends in access of the population along the line of contact to humanitarian assistance, involvement of communities in humanitarian coordination processes, key players in these processes and coordination mechanisms available at the local level.

The geography of the study covers Donetsk (Bakhmutskiyi, Volnovaskiyi, Yasynuvatskiyi districts) and Luhansk (Zolote, Novoaidarskiyi, Stanychno-Luhanskiyi districts) regions.

Donetsk region

Bakhmutskiyi district



Zaitseve settlement was subordinated to Horlivka City Council until September 2016. At that time, separated parts of the settlement (so-called Bakhmutka, Zhovanka, Maiorsk, Pisky, Dachi) were in the so-called «grey zone», that is, on the territory which was not controlled by either the AFU or the NSAGs. Access to these settlements was only possible through Zaitseve checkpoint (now - Maiorske). Due to active confrontations in this area, power lines were damaged in as far back as 2015, and a part of Zaitseve did not have electricity at all for a year.

In 2016, Zaitseve was re-subordinated to the Bakhmut district, and the CMA was established.

According to volunteers living in Bakhmutka and Pisky-2, none of the humanitarian organizations knew about the existence of these settlements in 2014-2015. Pisky-2 was not even marked on maps. In 2015, the road linking Pisky-2 with the Maiorsk-Bakhmut route was mined. One could only travel through Bakhmutka. In spring 2014, the passage to/from Bakhmutka was blocked for about two weeks because of the movement of the military and active confrontations. In 2015, a checkpoint was installed at the entrance to Bakhmutka, which could only be crossed with a passport containing local registration. The checkpoint was withdrawn in 2017.

Delivery of humanitarian assistance to Pisky-2 started in 2015. Due to less favourable proximity to the line of contact, humanitarian assistance to Bakhmutka started only in 2016. Until now, humanitarian organizations did not have accurate information on the needs, the size and demographics of the population of Zaitseve, and the inhabitants did not have any information about the possibility of getting assistance. Due to the lack of electricity, Internet and telephone communications, transport links and dangerous communication (mined area around, roads open for sniping), residents of certain parts of Zaitseve were blocked in their settlements for months.

Today, the threat of shelling, proximity to the line of contact and mines remain the main risk factors. After the establishment of the civil-military administration and the transfer of the checkpoints, the situation with access improved, and Zaitseve began receiving the necessary assistance. The representative of Pisky-2 noted that the assistance received is of a sufficient volume. However, a resident of Bakhmutka argues that the needs of the population are not covered by humanitarian assistance. The interlocutors of the CF «Right to Protection» estimated as very effective the level of humanitarian coordination at the moment and noted OCHA and CIMIC as the main coordination mechanisms used. One of the drawbacks of coordination was the similarity of vulnerability criteria for recipients of assistance used by the majority of organizations for the selection of beneficiaries. Due to the loss of economic ties and the inability to engage in agriculture, all residents of the locality, regardless of age, disabilities or other vulnerabilities, are vulnerable to the effects of the conflict.



Interview of locals by monitors of the CF «Right to Protection»

Until early 2017, **Novoluhanske** settlement was between the «0» checkpoints of the AFU and NSAGs. Local residents were able to cross the checkpoint after providing a passport with a local registration stamp. The settlement was subjected to shelling until the end of 2017, and the security situation in the area remains tense. An interlocutor of the CF «Right to Protection», a local volunteer, said that assistance to the residents of Novoluhanske is being provided in sufficient quantities today, but noted that many of those who need it do not fall under the standard vulnerability criteria of most humanitarian organizations (for example, people of working age are not covered). Another problem, she said, is the lack of awareness among local residents who participate in the humanitarian response about the standards, assessment methods, humanitarian response plans, and other tools used by the organizations providing assistance.

Travneve settlement is in dangerous proximity to the line of contact. Until December 2017, residents of Travneve had access to services and social infrastructure (medical institutions, grocery stores) only in Holmivskiyi town, which is located in the NGCA. After the settlement was taken under the control of the Armed Forces, the road to Holmivskiyi was blocked, and the connection with the NGCA stopped. The connection with the rest of the GCA is complicated by the poor road quality. Thus, only one road leads to the settlement, which is a narrow strip covered with gravel for a considerable interval. Warnings about mines are on both sides of the road. A small section of the road at the entrance to the settlement was repeatedly subjected to sniper fire. Despite the attention of humanitarian organizations to the residents of Travneve and the possibility to exchange information about needs, the security situation remains the most important factor limiting access to the settlement.



An inspection of the destroyed housing.
Photo credit: Ukraine NGO Forum

«Hladosove» is, in fact, not a separate settlement, but only one street (Hladosivska Street) of Homilivskyi town, the rest of which is controlled by NSAGs. At the end of the street there is a checkpoint that separates the street from the rest of the settlement. The dangerous proximity to the line of contact and the bad road do not allow most humanitarian organizations to work there. Some organizations provide assistance to the residents of «Hladosove» in Travneve settlement (see above) – they can move between the settlements on foot. According to local residents, the situation could be improved through road repairs and re-subordination of this part of the settlement to the nearest settlement council in the GCA, which would be able to represent the interests of the inhabitants.

Krynichne village: Until 2017, the military were located near the village and directly in the village. Because of this, access to it was severely limited. After the military left Krynichne, the main obstacle to access is the poor road quality and the lack of transport links with Luhanske town, where the assistance is mostly delivered to. This is relevant for all settlements of the Luhanske Settlement Council – it is in the Settlement Council that there is information about the possibility of receiving assistance, individual aid is distributed there, and the Settlement Council coordinates the process of collecting and transferring data about needs. The distance from Krynichne to Luhanske is more than 10 km. The representative of the community, with whom the CF «Right to Protection» communicated, considers it necessary for humanitarian organizations to visit Krynichne directly to inform the residents in a timely manner about the possibility of receiving assistance and its fair distribution.

The residents of **Myronivka Village** of the Luhanske Settlement Council complain about the same problems – due to poor road quality and the lack of transport connections, they have no opportunity to receive assistance in Luhanske. The interlocutors of the CF «Right to Protection» from Krynichne and Myronivka also emphasize that only some vulnerable groups can receive assistance, while others are deprived of this opportunity, although they also need help.

Volnovaskyi district

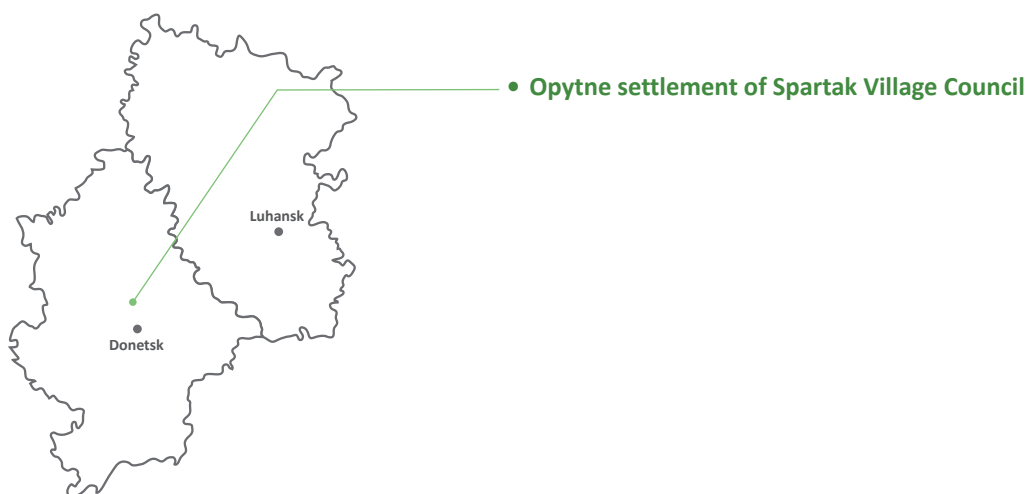


Hranitne village had restrictions on freedom of movement until mid 2015. Now, there are no problems with access to the settlement and the displacement of the inhabitants. Humanitarian organizations providing assistance in the form of food, drinking water, fuel, consulting, psychosocial assistance, conducting repairs and demining operations of the adjoining territories work freely in the village. However, the situation is similar to the one described above in the Luhanske region of Bakhmutskyi district - assistance is usually delivered to Hranitne, which is the center of the village council. Inhabitants of the villages around it (for example, **Staromariivka**, where about 100 people live) have to go to Hranitne themselves to receive it. Medical personnel, police, government officials and social services do not visit Staromariivka village.

The Mykolaivka Village Council, together with **Mykolaivka village**, the inhabitants of which were subject to restrictions on freedom of movement for several months in 2015, includes, in particular, the villages of **Bohdanivka**, where certain restrictions exist to this day (only local residents and Head of the Village Council may enter the village, others - upon agreement with the command of the JFO), and **Viktorivka**. All the residents (about 50 people lived there in 2014) left the latter after the beginning of the conflict. According to representatives of the Mykolaivka Village Council, they all now live in Mykolaivka village and cannot return because the area is polluted with mines and ERW.

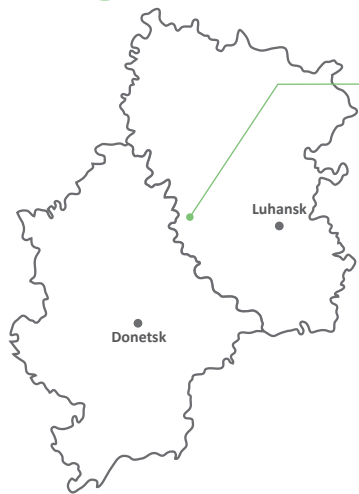
From February 2015 to date, entry to **Berdianske village** is limited. There is a checkpoint at the entrance to the settlement, and there is almost no transport connection (one can get to Mariupol from the neighbouring Sopiye, a bus provided by ADRA runs once a week). In May 2018, the CMA of Shyrokyne and Berdiansk villages was established, which greatly improved the access of residents to humanitarian assistance due to operational coordination. In spite of this, as well as the increased attention to the settlements of the so-called «5-kilometre zone» (that is, 5 km wide strips on both sides of the line of contact), which is a priority for many humanitarian assistance providers.

Yasynuvatskyi district



Opytne settlement of Spartak Village Council has been closed for entry since the beginning of 2014 due to proximity to Donetsk airport and active armed confrontations in the area throughout the conflict. Employees of humanitarian organizations may go to Opytne, but for security reasons only the staff of organizations that can provide their employees with special transport and personal protection equipment are permitted. In the settlement, where 38 people live now, there is no supply of water and electricity since the beginning of the conflict. Until 2019, there was no transport connection too. Recently, the residents of Opytne can use the social bus provided by the ICRC.

Luhansk region



- The city of Zolote consists of:

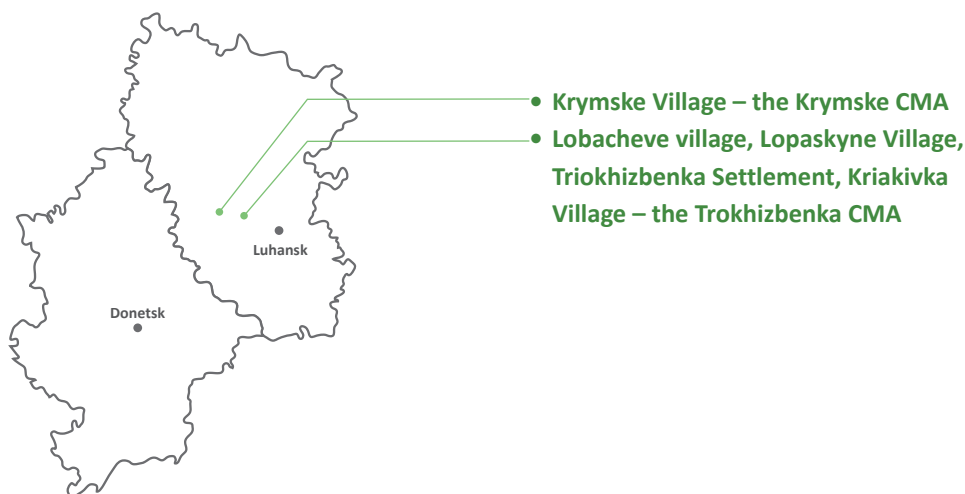
- Zolote
- Zolote-1
- Zolote-2
- Zolote-3
- Zolote-4
- Zolote-5

The **city of Zolote** consists of: Zolote, Zolote-1, Zolote-2, Zolote-3, Zolote-4, and Zolote-5 (the latter belong to NGCA). In 2014, 2 checkpoints were installed in Zolote, which were withdrawn in early 2016, when Zolote EECP was created on the section of the road separating Zolote-4, Katerynivka village and Zolote-5 from other parts of the city. Until 2017, only inhabitants of Zolote-4 and Katerynivka could cross this checkpoint. As of early 2019, the Zolote checkpoint does not permit passage of persons and transport to the NGCA, since the checkpoint in the NGCA was never opened. Thus, the EECP actually operates as an internal checkpoint, passing people to Zolote-4 and Katerynivka. From 2017, not only local residents have the right to pass. Documents and vehicles are inspected when passing. According to a volunteer from Zolote, as of the beginning of 2019, there are no significant problems with humanitarian access in Zolote, but due to the lack of coordination the assistance is distributed unfairly. At the same time, we should note that because of proximity to the line of contact the security situation represents a serious restriction of access. On October 24, 2018, a monitoring team of the CF «Right to Protection» was working in Zolote-4. As the team was returning, firing began. Thanks to time-efficient coordination with OCHA and the CIMIC, the team was able to leave the danger zone within 45 minutes, accompanied by a CIMIC officer vehicle. None of the employees was injured.



A local who settled in one of the abandoned houses.

Novoaidarkyi district



Four checkpoints have been installed in **Krymske** village since 2014: one at the entrance to the village, one at the exit from the village and two inside the settlement. Documents and vehicles were inspected at these checkpoints. In 2018, the checkpoint at the entrance to the village was withdrawn, but a permit signed by Head of the Krymske CMA is required for passage over the pontoon bridge. It is worth noting that such a permissive procedure for movement exists in some settlements along the line of contact, but it is not regulated by any legal act. Nevertheless, in practice, such restrictions may be introduced by agreement between the CMA and the CIMIC. Such a mechanism can operate with some differences. For example, for a mission to enter the settlement, it is necessary that a representative of the local authority meet it at the checkpoint and confirm that the group is heading to the settlement to provide humanitarian assistance. Or before taking a decision to pass, an employee at the checkpoint can call local authorities to clarify the information about the organization or mission that requests permission to pass and the purpose of its visit. Therefore, interaction with local authorities is extremely important in terms of access to the area.

Lobacheve and Lopaskyne villages are closed to most humanitarian organizations because of the proximity to the line of contact. For the most part, aid is delivered to Triokhizbenka, where residents of Lobacheve and Lopaskyne can pick it up themselves. From 2014 to the present, there are checkpoints at the entrance to the villages, where documents and vehicles are inspected. From 2015, crossing the checkpoints has only been possible for residents of these settlements. Moreover, in case they hire a car and plan to use it to enter the village, this will require a certificate from the CMA that the vehicle carries residents of these villages. Now, there are restrictions on getting to Trokhizbenka and Kriakivka. There is one checkpoint at the entrance to these settlements. Before 2016, there were three. The representative of the Trokhizbenka CMA believes that better informing the population about the activities of humanitarian organizations could improve coordination of humanitarian activities.



Monitor of the CF «Right to Protection» visiting a local woman

Bolotenne and Syze villages in the Stanychno-Luhanskyi district are effectively isolated due to the presence of the military and proximity of military positions. A limited volume of several types of aid (food, hygiene products, cash and medicines) is provided and only a few humanitarian organizations operate there.

In general, 11 of 19 respondents reported the lack of available information was an obstacle to effective access to assistance. Unfortunately, due to impaired infrastructure, poor transport communication, mobile communication interruptions, lack or limited access to the Internet, the affected population has no opportunity to find information about the possibility of receiving assistance independently. They appeal to humanitarian assistance providers to work more closely with local self-government bodies. On the other hand, in some cases, this may lead to an unfair distribution of humanitarian assistance because of corruption and favouritism by local authorities.

It should be noted that according to the interviews, the reformatting of the JFO into the ATO and martial law did not in any way affect the situation with humanitarian access to the communities represented by the respondents.

The proximity to the line of contact remains one of the biggest obstacles for the affected population to accessing assistance. So, even if humanitarian organizations operate in a settlement, the types of assistance are often very limited. The closer the settlement is to the line of contact, the more likely it is that its inhabitants will be able to get food, medicines, drinking water and other basic necessities, but they are unlikely to have access to such assistance as building materials or renovation works. This is due to the high risk of repeated damage to housing and property as a result of shelling.

ACCESS TO THE NGCA

This section gives a brief overview of the situation with the access of humanitarian organizations to persons who are under the control of the de facto authorities in the NGCA. Given that the Charitable Foundation «Right to Protection» has no representation outside the GCA and, accordingly, is not able to conduct field studies and comprehensive analysis of regulatory sources, the analysis was conducted on the basis of information from open sources such as the media and official online resources of the de facto authorities.

The so-called DNR and LNR have regulated access of humanitarian organizations to these territories through the Procedure for Accreditation of Humanitarian Missions³⁰ (*hereinafter referred to in this section as the «Procedure»*). Given the fact that the accreditation procedures for Donetsk and Luhansk regions have only minor differences, we will consider the key provisions through the example of Luhansk region.

Accreditation is defined as *«consent of the LNR for the activity of the humanitarian mission which complies with the established accreditation criteria³¹»*.

The term «humanitarian mission» covers a) *«the type of permanent or temporary representation of an international intergovernmental organization, an international non-governmental (public) organization or other foreign entity that provides humanitarian assistance on the territory of the Luhansk People's Republic»* and b) *«international intergovernmental (interstate) organization, international non-governmental (public) organization or other foreign entity that plans to establish a representative office and provide humanitarian assistance in the territory of the Luhansk People's Republic»*. That is, any humanitarian assistance providers that are non-resident in the territory of the so-called «LNR» are covered by the definition.

In accordance with the Procedure, *«Accreditation of humanitarian missions in the territory of the Luhansk People's Republic is carried out in order to ensure the safety and efficiency of the activities of the personnel of humanitarian missions, synchronize their work with other humanitarian missions and social policy in the territory of the Republic»*.

The accreditation procedure³² is as follows: a humanitarian organization willing to engage in activities in the territory under the control of de facto authorities shall, no later than ten (10) days before it arrives in such territory, notify the head of the special interdepartmental Accreditation commission (in the case of the so-called DNR – the Accreditation Committee). This notice shall contain, in particular:

«a list of countries in which the humanitarian mission carries out its activities;

in case of carrying out its activities in the territory of Ukraine, the date of registration, the list and description of the programs carried out by the humanitarian mission in the territory of Ukraine, its location;

a full list and description of the programs, including the terms of implementation and the quantitative indicators that are planned to be implemented in the territory of the Luhansk People's Republic; [...]

information on the premises and vehicles that the humanitarian mission plans to use in the territory of the Luhansk People's Republic;

data on representatives of the humanitarian mission who will arrive in the territory of the Luhansk People's Republic for carrying out the accreditation procedure of the humanitarian mission, including residential addresses, places of actual residence, occupied position, contact phone numbers [...]»

The message is sent to the commission for consideration, and within three working days the commission sends its *«proposals on the possibility of accreditation of the humanitarian mission on the territory of the Luhansk People's Republic»*. Within 14 working days the Commission examines the application for accreditation and decides to provide or refuse accreditation.»

The following accreditation principles are declared in the Procedure:

³⁰ For example, the accreditation procedure in the so-called LNR is provided by the Resolution of the Council of Ministers of the Luhansk People's Republic No. 02-04 / 225/15 dated 21.07.2015, as amended: https://sovminlr.ru/docs/2018/03/05/doc_225.pdf

³¹ Hereinafter the quotes from the above Procedure are provided.

³² In accordance with the Procedure effective in the territory of the so-called LNR

- 1) *«competence and impartiality;*
- 2) *openness and simplicity of accreditation rules;*
- 3) *humanity aimed at providing assistance to the population of the Republic;*
- 4) *unity of accreditation rules and ensuring equal conditions for applicants for accreditation;*
- 5) *ensuring the confidentiality of information obtained in the course of the accreditation activity and the use of such information only for the purpose for which it is provided.»*

That is, the Procedure refers to the humanitarian principles and standards of humanitarian assistance provision. At the same time, this document contains provisions that contradict the impartiality principle. For example, the issue of granting accreditation is taken by the relevant regulatory authority, including on the basis of information on the geography of the organization's activities, with particular emphasis on its presence in the territory of Ukraine.

Among the functions of the Commission it is stated that *«it is responsible for analyzing the applicant's alleged humanitarian assistance according to the criteria of significance for the Luhansk People's Republic and making recommendations on their target use»*. That is, the Commission directly intervenes in the activities of the organization, reserves the right to prioritize certain groups of recipients of assistance and makes it impossible to conduct an independent assessment of the needs of the population, violating the declared principle of independence.

The requirement to provide personal data of employees (including data on the registered and actual place of residence) at the stage of the notification by the organization of its intention to carry out its activity in the territory does not comply with the declared goal of ensuring safety of the personnel of humanitarian missions.

It should be noted that the requirements set by the de facto authorities of the NGCA cause serious concerns to most international humanitarian organizations about the independence of their activities in the NGCA and the safety of their employees. In most cases, this is a serious bureaucratic obstacle to accessing the population in need of assistance. This is evidenced by the small number of organizations that have received such accreditation. Thus, the Head of the Interdepartmental Accreditation Committee in the so-called DNR in its 2018 report announced 10 humanitarian organizations with which the Committee has been cooperating during 3.5 years of its existence.³³ This is not talking about the simultaneous operation of ten organizations, but the total number for the relevant period.

Another serious challenge for humanitarian actors is the issuance of accreditation for a short period (from one to several months) that threatens the efficiency and sustainability of humanitarian assistance. This also puts organizations in a position of dependence, since they must repeatedly undergo a procedure on an ongoing basis to continue their activities subject to the conditions of the de facto authorities.

³³ <https://mid-dnr.su/ru/pages/docs/doklad-ob-itogah-raboty-ministerstva-inostrannyh-d-1562/>

CONCLUSIONS

This study examined two key aspects of ensuring humanitarian access: the particularities of regulation of humanitarian access issues in Ukrainian law, and how it is implemented by humanitarian actors in practice.

In addition to other available or potential obstacles for humanitarian assistance providers in Ukraine, the most complex and acute is the extremely limited possibility of operating in the NGCA. Unfortunately, despite the efforts of the United Nations, diplomats and individual international organizations, the accreditation procedure is still manipulative and does not guarantee the non-interference of the de facto authorities in the activities of organizations. At the same time, the situation of the population in the NGCA only worsens with time. The economic blockade, the lack of jobs, social security of the population, as well as the discriminatory policy of the Government of Ukraine regarding retirees and recipients of social benefits residing in the NGCA put many people on the edge of survival.

The need for humanitarian assistance along the line of contact on the GCA remains high. The logistics features, the destroyed infrastructure, minefields and the constant threat of shelling hamper access to humanitarian assistance. The most vulnerable is the population of rural areas because of the inability to engage in agriculture and get employed.

The inconsistency of the regulatory framework and the shortcomings of the legislation pose a threat of violation of the standards of humanitarian access established by international humanitarian law.

At the same time, a well-organized and effective system of responding to the humanitarian crisis caused by the consequences of the conflict was formed on the territory under the control of the Government.

The CF «Right to Protection» expresses gratitude to the partners from different humanitarian organizations and community representatives who agreed to provide information for this study. In particular, based on their experience and assessment of the situation, we see significant potential for improving the situation of people affected by the conflict, in case of the implementation of the following **recommendations**:

- Implementation in the NGCA of regulation of the access of humanitarian organizations to persons, which meets the provisions of international humanitarian law and human rights law.
- Bringing the provisions of Ukrainian legislation in line with Ukraine's international obligations in accordance with the provisions of international humanitarian law and human rights law.
- Systematic informational and educational activities of humanitarian organizations among local authorities and the affected population.
- Maximum involvement of all humanitarian actors to participate in coordinating their activities to exchange experiences, work out common solutions and fair distribution of humanitarian assistance among those who need it.



European Union
Civil Protection and
Humanitarian Aid

