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Ukraine's Newly Adopted Mine Action Law: What Does This Mean for HMA Programs?

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UKRAINE'S

Newly Adopted Mine Action Law:

WHAT DOES THIS MEAN FOR MA PROGRAMS?

by Henrique Garbino [Swiss Foundation for Mine Action]

Landmines and explosive remnants of war (ERW) are estimated to affect the lives of two million people in eastern Ukraine, restricting freedom of movement and access to key infrastructure and livelihoods.¹ Estimates on casualties vary widely and are often inconsistent. Nevertheless, estimates range between 1,600 and 3,600 military personnel and civilians who have fallen victim to mines and ERW since 2014.²

Recent contamination in the region is the result of the ongoing conflict between Ukrainian government forces and pro-Russian separatists in Luhansk and Donetsk oblasts.³ Although the full extent of contamination is unknown, conservative estimates suggest that about 20 sq km (7.72 sq mi) are contaminated.⁴

Currently, at least three government institutions are directly involved with humanitarian demining, with the support of three international NGOs.⁵ Many more organizations are involved in mine risk education (MRE), victim assistance, stockpile destruction, advocacy and training, advisory, and coordination of the mine action program. However, until January 2019, there was no strong legal framework to orchestrate these efforts.³ This article describes the current legal framework for mine action in Ukraine, analyzes the legislative process and bureaucratic impediments, and briefly discusses the different prospects of the newly-adopted mine action law.

Legislative Process

Representatives of mine action stakeholders in Ukraine agree that the obstacles to passing national legislation were not technical. Throughout the years, the mine action community has consolidated lessons learned and developed best practices for developing national mine action laws.⁷⁻⁹ Moreover, international organizations have provided direct support to the Ukrainian government in helping to overcome any technical obstacles.¹⁰ Yet, a specific legislation on mine action was approved only recently by the Ukrainian government. On 6 November 2018, the Verkhovna Rada (Parliament) of Ukraine conducted the first reading of draft law No. 9080-1.¹¹ However, it was returned for further amendments, and international organizations were asked to present their thoughts and suggestions.¹² The second reading of the bill took place exactly one month later, and the legislation was approved on 6 December 2018.¹³ The

draft law was then forwarded to the Cabinet of Ministers, which approved the legislation on 25 January 2019.

Instead of technical issues, the main challenges seemed to be of a political nature, as the very exercise of passing a law is a strenuous and time-consuming process. Moreover, the ongoing conflict has taken up most of the political attention and resources. Parallel to the conflict, the 2014 revolution triggered a series of reforms that are still taking place and most likely will continue to require political attention.¹⁴ The new mine action legislation will inevitably lead to another reform, which would affect roles, responsibilities, and budgeting among government authorities. Needless to say, such changes are likely to prompt internal friction and disagreement.¹⁴ In addition, private interests pushed forward by commercial companies led to considerable disagreements over the framework of the future mine action legislation during negotiations.¹⁵ Despite lengthy discussions, former inaction, and other delays in the adoption of a mine action law, government authorities slowly came to an agreement of their shared roles and responsibilities.¹⁶

Mine Action in Ukraine

The new law “On mine action in Ukraine” lays the legal and organizational groundwork for conducting mine action in Ukraine and also highlights the peculiarities of exercising state regulation in this area.¹⁸

The law defines “the legal ground, objectives and principles, national interests of Ukraine in the mine action ambit, a list of the mine action objects and entities, the procedure of their creation together with organizational and procedural principles of operation; requirements to mine action and demining specialists and their responsibilities; mine action sources of financing; the registration procedure for mine action operators, rendering assistance to blast victims, framing the status of territories intended for mine action purposes, etc.”¹³

Importantly, the law calls for a civilian-led mine action center, in order to “[provide] for regulations that govern democratic civic control in the field of mine action, the national interests of Ukraine in the field of mine action, the principles of international cooperation and implementation of economic activities in the field of mine action, including liability insurance during mine clearance and public procurement in the field of mine action.” The law also establishes the grounds

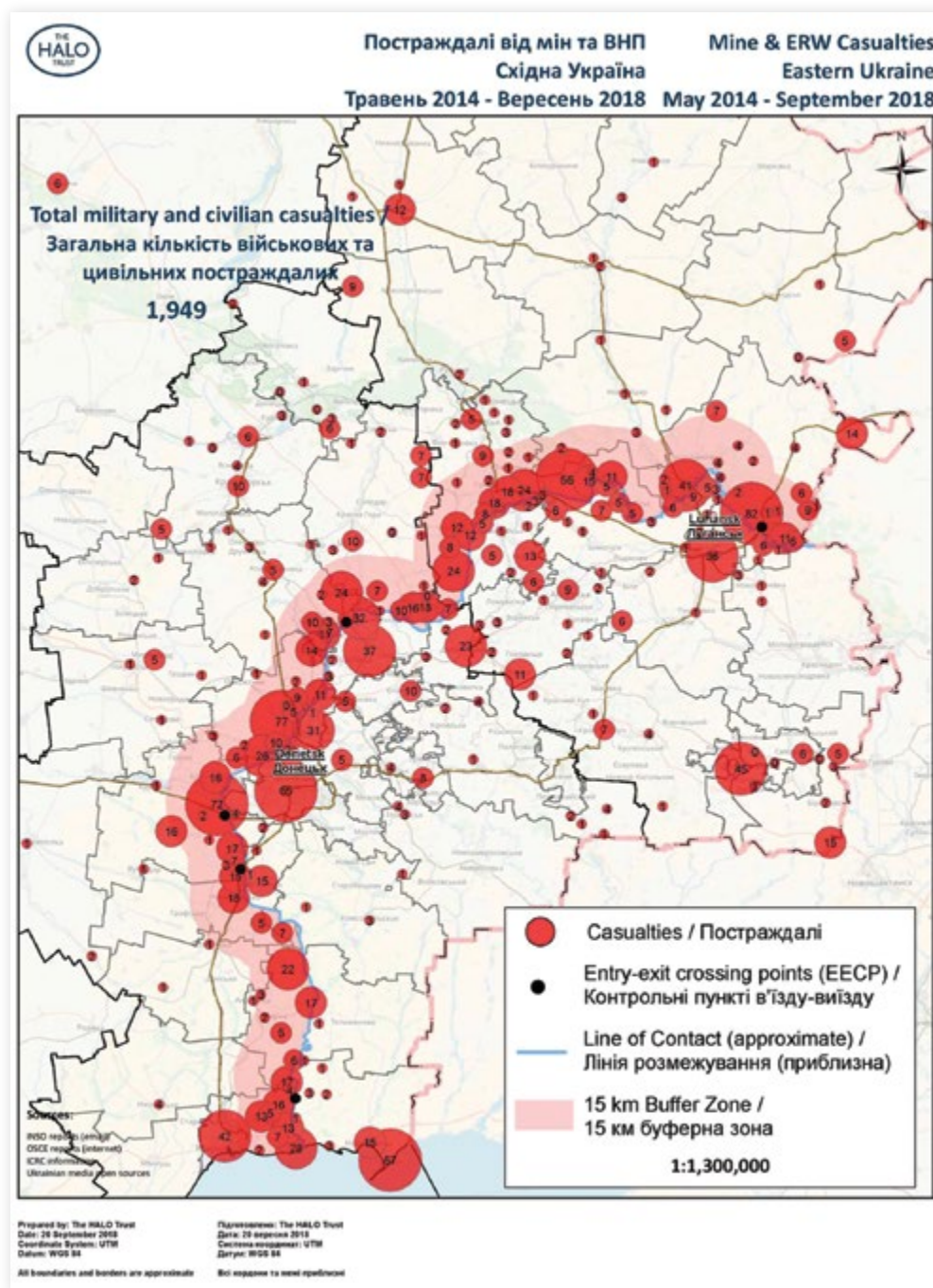


Figure 1. Mine and ERW casualties in eastern Ukraine.⁶
 Figure courtesy of The HALO Trust.

for procuring contracts for mine action services and provides liability for violating the mine action legislation.¹³

The new legislation is to be implemented by mid-2019, including the establishment of both the National Mine Action Authority and Mine Action Center.¹² It provides the necessary legal framework and institutional structure to advance the mine action program in Ukraine. However, because the law was passed after the 2019 budget had been approved, there is no dedicated government budget for its implementation.¹⁹ Therefore, it is still uncertain how and when the law will be implemented.

Before and After the Mine Action Legislation

Prior to the conflict, a presidential decree established a National Mine Action Authority (NMAA) in Ukraine on September 2013. The Ministry of Defense's (MOD) Department of Environmental Safety and Mine Action was tasked to coordinate the in-country mine action program, acting as the secretariat for the NMAA.³ At that time, the focus was on the destruction of stockpiles and legacy ERW from World War I and II.²⁰



National roundtable on national mine action standards in Kiev, 14 June 2018.²²
Image courtesy of Miljenko Vahtaric, Technical Adviser on Humanitarian Mine Action, OSCE.

After the conflict erupted in 2014, the scope of the problem increased substantially, and many other actors joined the demining effort, including different government bodies, international organizations, NGOs, and the private sector. Although the MOD remained the de facto coordinating body for humanitarian demining, it did not have the required authority over other ministries and government institutions currently involved in mine action. The coordination of MRE activities, for example, was mostly undertaken by the United Nations Development Program (UNDP)-led mine action subcluster, but not without flaws.²¹ There was sometimes poor or no coordination among partners performing MRE, with a high risk of leaving gaps in some areas and duplication of efforts in others.²¹ Likewise, local civil authorities in mine-affected communities did not seem to be informed about the scope of the problem and the location of hazardous areas in their region, let alone the current demining plans and activities.²²

According to the mine action legislation passed in late January 2019, the new National Mine Action Authority should be “a permanent interdepartmental collegial authority, set by the Cabinet of Ministers of Ukraine.”¹⁸ This structure should allow for better coordination among the different governmental authorities currently involved in mine action, although the challenge of ensuring local-level mine risk awareness and program support remains.

While Ukraine’s MOD is understandably mostly preoccupied with the ongoing conflict, it will remain the responsible authority for the prioritization of clearance tasks until the establishment of the National Mine Action Center by 25 April 2019. However, while immediate emergency and short-term security needs are a logical priority from a defense and security perspective, this might at times be contrary to long-term socio-economic perspectives and humanitarian objectives. For example, certain existing minefields might be regarded by the military as a necessary defensive obstacle and not be prioritized for clearance, even though it affects a large number of civilians.

In the absence of national standards, Ukraine adopted the International Mine Action Standards in September 2016 as a provisory measure until National Mine Action Standards (NMAAS) were approved.³ With the support of international actors, the MOD has drafted different NMAAS since 2016. However, even though most mine action operators had agreed to follow them, the standards were not binding without national legislation to enforce them.²³ The MOD finalized the NMAAS in late 2018 and, with the endorsement of the newly-passed national mine action legislation, expects to fully implement them by the end of 2019.^{18,24}

However, as one of the consequences of the delayed legislation, there have been inconsistencies throughout the mine action program in Ukraine. First, the Ministry of Temporarily Occupied Territories and Internally Displaced Persons, for example, had developed its own standards for MRE, which then competed with the MOD’s. Second, information management has been subject to duplication of efforts and discrepancies. At least two main mine action datasets are currently in place, one managed by the MOD and another by the State Emergency Services of Ukraine (SESU). There has been no clear division of responsibilities for data collection, especially for mine and ERW casualties, perhaps explaining the inconsistency and probable underreporting seen in this area.^{16,25} Moreover, the standards used for data entry differ from common international practice, leading to grossly overestimated figures for clearance activities.²⁶ The new legislation attempts to tackle those issues by abiding to the Information Management System for Mine Action and centralizing information under the National Mine Action Center.¹⁸

Unfortunately, compulsory accreditation and quality management processes were only recently established by the new mine action law.¹⁸ Humanitarian demining organizations have operated under individual memorandums of understanding with the MOD and are tasked by its Coordinating Group for Mine Action. Clearance procedures

were not externally verified before, during, or after execution and cleared land could not be officially released for use by the population. In the end of September 2018, the Ministry of Defense started its own accreditation process, but like the NMAS, they are only enforceable if backed up by the national legislation.²⁴ The current legal framework establishes an Accreditation and Monitoring Commission, but that is yet to be implemented.¹⁸

Until the NMAA is established, stakeholders need to deal with multiple interlocutors and risk miscommunication. A European Union (EU)-funded project in support of the State Special Transport Service's demining teams had to be closed after it was transferred from the auspices of the Ministry of Infrastructure to the MOD, because the EU could not support the Ukrainian military due to their funding policies.²⁷ Some argue that the lack of a specific legal framework caused concern and mistrust among prospective donors, thus limiting the availability of international funding.^{10,28} In order to address these concerns, the newly established NMAA will be responsible to act in the name of the state when dealing with international organizations within the sphere of mine action.¹⁸

An additional flaw was that the previous legal framework for mine action did not cover specific compensations and assistance for mine victims, deminers, and citizens who lost access to their livelihoods due to mine and ERW contamination. In fact, Ukrainian law only now distinguishes mine victims from other conflict-related victims.^{18,24} Even though the new legislation accounts for medical and socio-psychological support for victims of explosive ordnance, it only grants a one-time monetary compensation for persons under 18 years old.¹⁹ Moreover, it does not address many of the legal disputes that may arise in terms of land rights and compensation for lost livelihoods.¹⁸

Finally, the absence of specific procurement provisions—an issue not addressed by the new legislation—has hindered import and usage of dual-use equipment and vehicles, such as mine detectors, armored vehicles, and explosives. International operators face a series of bureaucratic impediments to import dual-use material and until this day are not authorized to dispose of the mines and ERW found during clearance operations.¹⁶ Instead, the MOD or SESU explosive ordnance disposal (EOD) teams are required to dispose of items. This current practice puts an unnecessary burden on EOD units, slows down clearance operations, and leaves mines and ERW exposed for longer periods of time, increasing the risk of accidents and criminal use of the ordnance.²³

Despite the general excitement with which the mine action community received the newly adopted legislation, the law has raised serious concerns especially among donors. Article 8 states that “donor-sponsored financial resources are credited to a special fund of the state budget under the relevant budget programs.”²⁴ In other words, donor funding should be pooled and managed by a government organization, and not directly by the implementing partners. While this provision was supported by representatives of the defense and security industry, it is unacceptable for most donors and could result in a large decrease, if not cessation, of funds from international donors.^{29,30} Nonetheless, Articles 20 and 28 assign the Ukrainian Cabinet of Ministers the responsibility to regulate mine action operators who are directly funded by donors. This raises the question of the legality of direct donor funding.¹⁹ The issue was raised, and member

of parliament Ivan Vinnyk proposed the Ukrainian Parliament vote in the plenary session on whether to direct donor funding of mine action, but the vote did not pass, and the question remains unanswered. Although the law is still valid, humanitarian mine action funding is at risk and is already impacting donor funding decisions relating to the future of continued mine action operations in Ukraine.³¹

Conclusion

Until January 2019, Ukraine did not have a national mine action legislation. However, the lack of specific legislation was not an insurmountable challenge for humanitarian demining and related activities. While important for addressing practical issues, such legislation is a crucial step toward ownership, and is an opportunity for a fresh start, to rectify working relationships, and adopt new procedures and higher-quality standards.¹³

Moreover, the new law is necessary to unleash the full potential of mine action in Ukraine by de-conflicting competing efforts and facilitating bureaucratic procedures. Furthermore, the new mine action law shows Ukraine's commitment to addressing the problem of contamination by mines and ERW and may enhance donor trust in funding a national program.¹⁴ Nevertheless, while the newly adopted legislation has clarified many inconsistencies of the Ukrainian mine action program, it has also shown significant gaps and created further uncertainty, especially in relation to direct donor funding and government budget for its implementation.¹⁹

Finally, while the new legislation is important now, it will be much more so when the conflict calms down. As the conflict in eastern Ukraine decreases in intensity and full clearance starts in the buffer zone, the number of operators and donors will likely increase, as will the need for better coordination and resource management.³² For now, with the support of international organizations, Ukrainian authorities bear the greatest responsibilities in implementing the mine action legislation. ©

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