



Sharing the costs of rehabilitation of civilian property damaged during the conflict

Four years into the conflict in eastern Ukraine, the need of the most vulnerable conflict-affected people for permanent and durable shelter solutions is becoming more and more acute. Ukraine has yet to take steps to assess and provide compensation for conflict-related damages to housing, land and property. Many people cannot even access humanitarian assistance since they lack title documents. The government should eliminate barriers to obtain property documentation for the conflict-affected population.

The background

The conflict in eastern Ukraine has resulted in thousands of casualties, the displacement of millions of people and significant destruction of civilian property and communal infrastructure. Although there is no official data on the rate of destruction, according to the data of the humanitarian community in Ukraine,¹ some 21,500 households in GCA (and an estimated 20,000 households in NGCA) have been damaged or

destroyed in the course of the hostilities, of which 56 per cent of homes incurred light damages, 27 per cent of homes incurred medium, 14 per cent heavy damages, and three per cent incurred full destruction.² Between March and August 2017, a flare up in hostilities caused new damage to over 700 homes.³

The response of the humanitarian actors through structural repairs, access to permanent housing (including reconstruction), and essential utility

¹ Shelter Cluster Database (as of November 2017).

² 2016 Shelter Cluster Report, Ukraine, March 2017.

³ Shelter Cluster – Damage Database

network repairs/reconstruction remains meagre (eg only 721 households received assistance with heavy repairs in 2016 and first half of 2017).⁴ Although humanitarian actors are able to provide more assistance, they cannot start construction activities if potential beneficiaries lack proper title documents.

The DRC assessment of legal needs along the contact-line in government controlled areas of Donetsk *oblast* showed that at least 14 per cent of the people owning residential property do not have a title document to prove their ownership; a further 83 per cent of people who have inherited property since the beginning of the conflict have no documentation for legal possession.⁵ Moreover, 30 per cent of the owners of single family houses in rural areas did not take the steps to privatise their land, even though they hold a document proving privatisation of the housing structure on it.⁶ An NRC shelter/ICLA needs assessment in November 2017 revealed that 69 out of 202 of the most vulnerable families in need of assistance with heavy repairs or reconstruction in Novoaidar, Popasna and Stanytsia-Luhanska districts of the government controlled areas of Luhansk *oblast*, do not have property title documents.

The payment of up to UAH 10,000 for restoring or obtaining property documents is an expense that an average family living in a damaged property in conflict-affected areas simply cannot afford, especially with increased levels of unemployment and poverty, with an average monthly income of UAH 2,077 per household along the contact line⁷ and with the actual minimum subsistence level as high as UAH 3,035.⁸ In the absence of any State mechanism for assessment and compensation for damages to housing, land and property,⁹ these people have been deprived of an opportunity to access repair/reconstruction assistance by humanitarian actors because they cannot show documents proving their property rights.

The barriers to repairing or rehabilitating damaged or destroyed property

Currently there are no documentation, assessment and compensation mechanisms to address the losses for housing, land and property damaged or destroyed as a consequence of the hostilities in eastern Ukraine. There are several draft laws that consider the right to compensation for damaged/destroyed housing.¹⁰ These legislative initiatives mainly address the interests of registered internally displaced (IDPs) and disregard the genuine concerns of those IDPs who cannot or would not register, or of those conflict-affected people who would not fall into the category of displaced people because they continue to live in their damaged houses due to lack of alternatives. In existing legislation, Article 19 of the Law of Ukraine *On Combatting Terrorism* provides for compensation for damages caused by terrorist act from the State budget, in accordance with the law, with subsequent reimbursement claim by the State from the offender. No such law has yet been adopted.

Currently there are two avenues of redress for people who have suffered damages to their housing, land and property due to hostilities:

- 1) to resort to courts and seek compensation from the State
- 2) to appeal to humanitarian community for assistance with repair or reconstruction

As of autumn 2017 there were over 100 proceedings instituted before Ukrainian courts concerning claims for compensation of damages by the State. No such claim has been satisfied yet. While the three-year prescription period is looming for the claims for damages caused in 2014, the litigation costs discourage many from attempting to access justice through the judicial system. Instead, they seek support from humanitarian actors, usually international organisations providing shelter assistance in the field. But to be eligible for such assistance, they still need to provide documents proving property rights to the damaged or destroyed property.

The most common issues vis-a-vis property title documentation relate to incomplete inheritance and privatisation procedures or purchase/sale

⁴ Shelter Cluster 5W and Damage Database; 2017 Humanitarian Response Plan Mid-Year Review.

⁵ DRC, "Legal Assistance Needs Assessment", January 2017.

⁶ Ibid.

⁷ NRC, Post-Distribution Monitoring, July 2016, unpublished.

⁸ IOM, Quarterly National Monitoring System, November 2017.

⁹ NRC, Briefing Note: People in Eastern Ukraine without Housing and Compensation.

¹⁰ See eg Draft Law Nos. 2167, 3434, 4301 and 6472.

transactions, as well as lost, damaged or destroyed documents due to the conflict.

Most of the conflict-affected people in need of assistance with repairs or reconstruction of their property are not even aware of the legal requirements, particularly as they relate to the privatisation of land.

The privatisation of land following the dissolution of the Soviet Union has not provided for sufficient incentives for owners of houses built on communal or state land to privatise that land. Privatisation was necessary only for disposition (for example, inheritance, re/construction, lease, mortgage, etc) of the property. Moreover, as of 01 January 2013, when the State Land Cadaster entered into force, all land plots should be recorded in this electronic database and receive a cadaster number, which is necessary for all deals related to the real estate. Only land plots privatised after the State Land Cadaster was structured have been recorded. In order to receive a cadaster number, the owner must provide technical land documentation or a land-use project plan from a licensed land surveyor. The average fee for land technical documentation ranges from UAH 1,200-3,000, whereas the cost of a land-use project plan cost may amount to over UAH 5,000.

In very few cases, local self-government bodies (eg Volnovakha district, Donetsk *oblast*) have covered the costs of land privatisation for vulnerable families, in order to help them access humanitarian assistance. Such positive examples are exceptional.

A significant number of communities and settlements along the contact-line were re-subordinated from administrative centres located in NGCA to GCA after the conflict erupted, although the registries/archives (notary, housing and land documents) remained in NGCA. Residents of these communities are unable to complete privatisation or produce title documents necessary for repair/reconstruction assistance, because according to the current legislation, any document issued by NGCA *de facto* authorities is *null and void* in Ukraine and there is no other possibility to restore such documents, except through courts.

The outcome of the litigation is almost always uncertain. Moreover, the establishment of property rights in court entails first and foremost, court fees. The rate of court fees is determined in relation to the value of the property and the minimum level of

subsistence (MLS) for able-bodied person, which in November 2017 amounted to UAH 1,684. The court fees are set as follows:

- one per cent of the value of the claim, but not less than MLS 0.4 (UAH 640 and not more than MLS 5 (UAH 8,000) – at the court of first instance
- 110 per cent of the first instance court fee – at the appeals court
- 120 per cent of the first instance court fee – at the cassation court

The value of the property is determined by the State estimator, whose service costs between UAH 1,000-1,500.

Article 8 of the Court Fees Law provides that the court may decide to defer, reduce, or exempt from the payment or order payment of court fees in installments for indigent applicants. While there are no official statistics, it seems that the courts in Donbas region show aptitude to waive the fees if the claim is sufficiently supported with evidence of the plaintiff's unfavourable financial situation. Nevertheless, the discretionary power of judges to reject the request for waiver of court fees, weighs negatively in an individual's decision to resort to courts.

In addition to court fees, and apart from legal representation costs, in any court proceedings concerning either claims for compensation of damages or for restoration or obtaining of relevant property title documents, the plaintiffs are additionally required to submit different evidence, from a duplicate of real estate title documents to damage assessments to proof of paying land taxes, if the plot of land is privatised.

Obtaining a duplicate of title documents from the unified state register of legal entities/archives costs UAH 170.

Notary service which are relevant particularly in inheritance proceedings or purchase/sales transactions are payable and cost more than UAH 1,300. No exemption from the payment of fees is stipulated in the Law *On Notaries*, although there

are few positive examples of pro bono provision of those services.¹¹

Housing project documentation (eg plans, blueprints) is provided by Bureaus of Technical Inventory, which may be communal or privately owned. The land projects and plans are provided by the State Registries within the State Land Agency/GeoCadaster or by public or private notary services. All of these service providers charge fees. For example, Bureau of Technical Inventory may charge from UAH 400-3,800 for restoration of technical passport of an apartment or a house.

The fact of damage/destruction of the property may be determined by private service providers (approximately UAH 500) or by competent local

councils. In the latter case, since there is no unified form or guidance on assessment of damages, a wide variety of documents has been used in practice which undermines their evidentiary value. In October 2017, the Housing, Land and Property Technical Working Group¹² presented the model template of Act of Destruction and Guidelines to the Ministry of Social Policy for review and consideration.

Ukraine's legislative, judicial and executive authorities should eliminate barriers to receiving property documents by conflict-affected people in eastern Ukraine in order to help them access assistance for the repair/rehabilitation of their damaged or destroyed homes by humanitarian actors.

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¹¹ For example, Legal Aid Clinic of Odessa Faculty of Law provides free of charge notary services.

¹² The HLP TWG is a joint structure of the Protection and Shelter Clusters, Ukraine.

NRC recommendations:

- Development of ad hoc mechanisms for ensuring that people affected by the conflict in eastern Ukraine, whose property has been damaged or destroyed in the course of hostilities, have access to humanitarian assistance by providing exemption from the payment of administrative or court fees due to the State, regional or local budgets for restoration/obtaining of property title documents and by offering free-of-charge services or financial support for the payment of other associated costs.
- Establishment of a special claims commission that will, over the long term, be authorised to provide through administrative procedures both formal assessment of damages and enforcement of restitution/compensation claims from the State budget of Ukraine.
- Development of a comprehensive reparation programme for individuals who have suffered harm, including economic loss or substantial impairment of their human rights as a direct result of the conflict in eastern Ukraine, in line with the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation.



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