

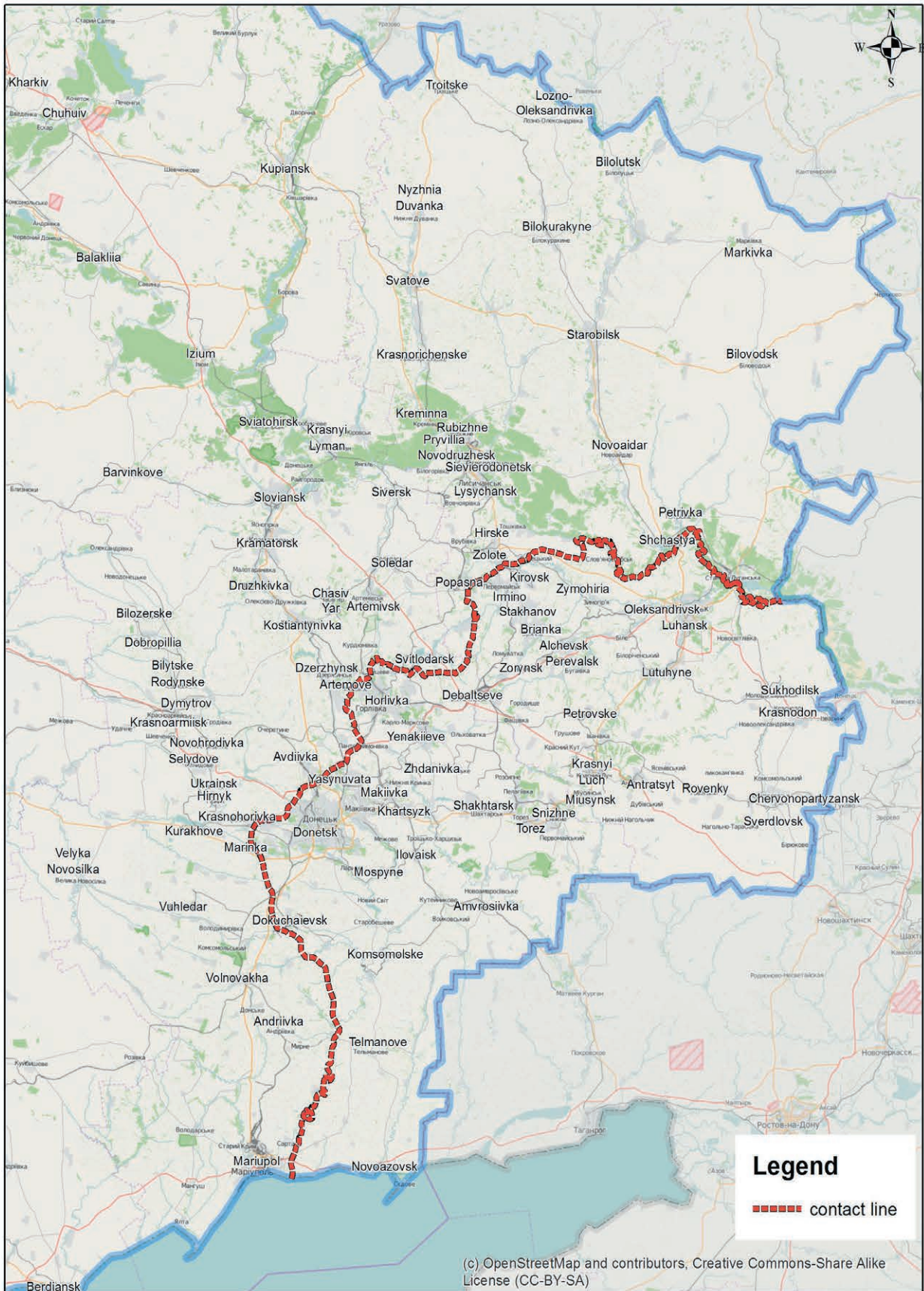
HOUSING, LAND AND PROPERTY RIGHTS OF DISPLACED AND CONFLICT-AFFECTED COMMUNITIES IN EASTERN UKRAINE

Executive Summary - November 2015

NRC

NORWEGIAN
REFUGEE COUNCIL





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BACKGROUND

This document represents the executive summary of the full report (forthcoming). The study was commissioned by the Norwegian Refugee Council (NRC) to assess issues relating to the housing, land and property (HLP) rights of internally displaced persons (IDPs) and conflict-affected communities in eastern Ukraine. The assessment covers government controlled areas (GCA), non-government controlled areas (NGCA) and frontline communities along the contact line between GCA and NGCA.

The research for the report was conducted during two field missions in July and August 2015. This included 32 key informant interviews, focus group discussions with 140 IDPs and conflict-affected individuals, and the collection of 50 case studies.

HUMANITARIAN CONTEXT

As of November 2015, there were some 4 million people affected by conflict in eastern Ukraine. This includes an estimated 2.7 million people living in NGCA and 800'000 people living in frontline communities along the contact line (in GCA and NGCA). According to the Ministry of Social Policy there were over 1.5 million registered IDPs as of November 2015.¹ However, due to Government restrictions on the definition of an IDP, the true number of IDPs is unknown.²

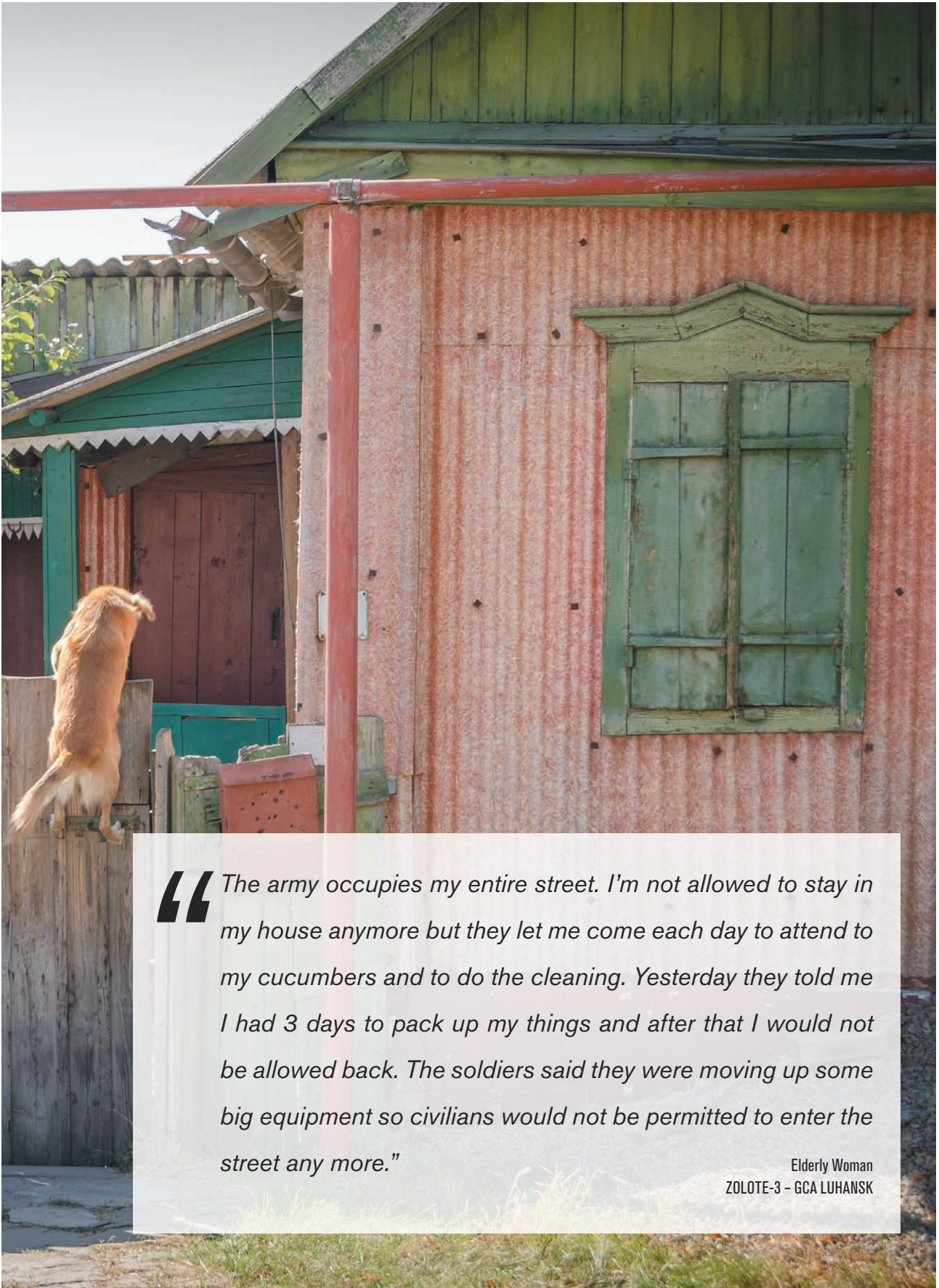
Conflict and displacement have disproportionately affected women in Ukraine where they comprise 63 percent of IDPs.³ Many IDPs families are female-headed and women also bear a much larger burden than men in roles as carers for children, the sick and elderly. The majority of frontline community residents are women and older people who risk remaining in insecure environments as they cannot afford to leave their homes or livelihoods.

This research has revealed gaps across a range of shelter and HLP issues which should be urgently addressed to prevent further deterioration in conditions for IDPs and conflict-affected communities.

1 Ministry of Social Policy of Ukraine, online: http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=183396&cat_id=107177 [accessed: 17 November 2015].

2 IDMC (03 September 2015) Briefing Paper: Displacement figures in Ukraine fail to reflect a complex reality, www.internal-displacement.org/europe-the-caucasus-and-central-asia/ukraine/new-archive/displacement-figures-in-ukraine-fail-to-reflect-a-complex-reality

3 UN Women (07 October 2015) UN tackles gender and humanitarian impacts of Ukraine's eastern conflict. <http://eca.unwomen.org/en/news/stories/2015/10/ukraine-un-tackles-gender-and-humanitarian-impacts>



“ *The army occupies my entire street. I'm not allowed to stay in my house anymore but they let me come each day to attend to my cucumbers and to do the cleaning. Yesterday they told me I had 3 days to pack up my things and after that I would not be allowed back. The soldiers said they were moving up some big equipment so civilians would not be permitted to enter the street any more.”*

Elderly Woman
ZOLOTE-3 - GCA LUHANSK

CHALLENGES

HLP CHALLENGES FOR IDPS IN NGCA, GCA AND FRONTLINE COMMUNITIES

HLP rights for IDPs in eastern Ukraine are at risk, especially for those with property in NGCA, amongst frontline communities, for non-registered IDPs and for IDPs renting accommodation.

Contradictory legal and policy framework

Since the outbreak of the conflict new legislation in the form of laws, temporary orders and Cabinet of Ministers' resolutions have been enacted, often very rapidly in order to address emerging internal displacement and conflict-related situations. Consequently, the legal framework relating to a range of IDPs issues, including HLP rights, is complex and has gaps in scope and application. Not all of the laws have been ratified and a number remain in draft form. Although most of the required provisions already exist in Ukraine's IDP law⁴, some are contradicted by previously adopted resolutions that are still widely applied. The continued application of the restricted definition of an IDP (see below) is one example of this.

Restricted definition of an IDP

Although Ukraine's IDP law defines IDPs as anyone who has had to leave their home as a result of the conflict, the interpretation of Ukrainian regulations in practice geographically restricts the definition of an IDP to people who have moved from NGCA to GCA. People who have fled their homes in GCA are therefore not entitled to register. This is inconsistent with the definition of an IDP as set out in international law: *The Guiding Principles on Internal*

*Displacement*⁵ define an IDP as anyone who has been forced to flee their home and who have not crossed an internationally recognised state border.⁶

A similar limitation exists in draft law No. 2167,⁷ which has been designed to establish a legal basis through which compensation processes and procedures can be developed. It is also limited in its scope as it applies to registered IDPs but does not extend to all internally displaced persons (as explained above) in contradiction of international law.⁸

Lack of sufficient and adequate housing

There are chronic housing needs across the whole of Ukraine which have been amplified by displacement, with an acute shortage of adequate accommodation in the areas with the highest influx. Most IDPs rent accommodation or stay with friends and families. Those who cannot are housed in collective centres, resorts and sanatoriums allocated for temporary use by the municipal authorities. Much of this accommodation is not suited for winter conditions, lacking adequate heating and insulation. Collective centres, in particular, are overcrowded with inadequate facilities.

⁴ Law on Ensuring the Rights and Freedoms of Internally Displaced Persons (IDP Law) (adopted 20 October 2014 / enacted 22 November 2014):

⁵ <http://www.ohchr.org/EN/Issues/IDPersons/Pages/Standards.aspx>

⁶ OCHA (2004) Introduction: Scope and Purpose (2), *The Guiding Principles on Internal Displacement* <http://www.brookings.edu/~media/Projects/idp/GPEnglish.pdf>

⁷ Right to Protection (2015) Draft Law 2167 on compensation of damaged property of internally displaced people. <http://issuu.com/veronikafomenko/docs/2167infographicseng>

⁸ OCHA et al (2007) Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the Pinheiro Principles.

“ I have heard that the ‘LPR’ have issued a decree saying that if people don’t come back and ‘register’ their properties that they risk losing them. I am a pensioner and the return trip to Luhansk costs more than my monthly pension. I can’t afford to go but I can’t afford to lose my property either as I want to go back when there is peace.”

IDP Pensioner
KABYCHIVKA



Fear of losing property in conflict-affected areas

It was reported that in April 2015 the *de facto* authorities in NGCA announced that property vacant for 45 days is subject to confiscation. Although this is not confirmed, IDPs interviewed for this research are concerned about the potential implications. Many are not able to return to NGCA due to the cost and travel time necessary. The Temporary Order of 21 January 2015 requiring an approved travel pass to cross between GCA and NGCA has also increased the bureaucratic hurdles for IDPs to make this journey.

For IDPs who have left behind property which is mortgaged, there is uncertainty over the

continuation of mortgage repayments. In NGCA, Ukrainian banks have ceased to operate. Most IDPs interviewed were unaware of provisions under the Government’s Temporary Measures to secure the rights of mortgagors for properties in NGCA, in the event of delayed payments. However, the Temporary Measures make no provision for suspension of repayments for properties located within GCA and frontline communities, or which have been damaged or destroyed during earlier offensives.

IDPs also reported concerns over losing social housing rights in NGCA for failing to pay utility bills *in absentia*. However some IDPs reported that they had been able to return to NGCA to secure a waiver from local authorities for the time they have been absent.

Military occupation of civilian property and mine/UXO contamination of farmland

The expropriation of property within frontline communities appears to be taking place in GCA, according to some respondents who reported losing access to their properties in these areas. Expropriation and occupation were reported to have occurred in relation to residential houses, business property and private agricultural lands. The extent of expropriations is not fully understood, however, in the reported incidents, no compensation, alternative accommodation or official documentation was provided to the owner. People in frontline communities also reported looting and damage to their property, in addition to being obliged to continue paying utility bills and mortgage repayments on their occupied dwellings. The extent to which expropriation is occurring in NGCA is not yet known.

Furthermore, the presence of landmines and unexploded ordnance (UXO) in areas near the contact line presents a significant risk to civilians.⁹ The Mine Action sub-cluster estimates that at least 30,000 hectares of land in eastern Ukraine may be contaminated.¹⁰ Exposure to this hazard is expected to increase when land is cultivated next spring. The continued presence of mines and UXOs in farmland will also impact future return prospects, affecting access to property.

Lack of security of tenure for IDPs in rented accommodation

Over half of the IDPs in eastern Ukraine are living in rented accommodation.¹¹ As displacement continues this is the least sustainable option – rental payments deplete IDPs' capital, savings and assets. In Luhansk *oblast* approximately 65 percent of IDPs who rent were paying between UAH 250 and UAH 1,000 a month. Even at the lowest rate this represents more than half of an IDP's monthly allowance.

Across the region, 87.4 percent of IDPs renting have no lease agreement,¹² leaving them vulnerable

to price increases and evictions. It was reported that the majority of landlords are unwilling to enter into rental agreements, preferring informal arrangements, because they fear that formalisation will result in their rental income being taxed, invite penalties for tax avoidance and open the door for quality checks and controls. Landlords were also reported to be concerned about the risk of being unable to get their tenants to leave and end up with non-paying squatters.

Some IDPs interviewed related experiences where landlords had only accepted them on condition that they did not register as IDPs. This situation creates a number of vulnerabilities for IDPs tenants who can end up renting low quality accommodation with no agreement on repairs or price hikes and who are vulnerable to eviction in the event that they fail to pay on time. IDPs who cannot register to access benefits are forced to use their savings and sell off assets to pay for the accommodation, which will have longer-term impacts on their coping mechanisms and return prospects.

Lack of access to legal services

Access to legal services is problematic for those living in NGCA, as well as for IDPs from NGCA who need to deal with property they left behind. The absence of functioning Ukrainian courts and notarial services means that any transactional or registration requirements involving property (i.e. sales, purchases, rentals, disputes and inheritance) need to be concluded by both parties within GCA, to be legally recognised by the Government. This entails considerable time, effort, expense and the negotiation of a lengthy and complex bureaucracy in applying for permission to obtain travel passes to cross the contact line.¹³

9 OCHA, Ukraine Humanitarian Bulletin, Issue 3, 1-31 October, 2015, http://reliefweb.int/sites/reliefweb.int/files/resources/humanitarian_bulletin_ukraine_-_issue_03.pdf

10 Ibid.

11 REACH/Shelter Cluster Ukraine (August 2015) Shelter and NFI Needs Assessment Report – Ukraine.

12 Based on a sample of 2,573 households

13 This process could also render inheritance claims problematic as probate requires the estate of a deceased person to be assessed, usually involving a physical inspection of any properties involved. However, amendments to certain legislative acts supplementary to the Temporary Measures remedy this problem. If the last place of residence of the testator lies in NGCA, then inheritance proceedings can be initiated anywhere in GCA, provided the property records are available. Notary Chamber of Ukraine, Inheritance. <http://npu.in.ua/en/for-the-population/documents-required-for-registration/inheritance#Vh5f1mQrJxh>

CONCLUSION

As the conflict approaches the end of its second year, the Government and humanitarian organisations need to plan their responses taking into account a range of possible future scenarios. Depending upon the trajectories of the conflict, IDPs and conflict-affected communities in eastern Ukraine could be facing a protracted displacement situation, the beginning of large-scale voluntary returns, or something in between. The following recommendations aim to strengthen HLP rights of displaced and conflict-affected populations to underpin durable solutions:

RECOMMENDATIONS

To the Government

1. Conduct a review of all legislation pertaining to IDPs in order to harmonise existing and draft laws and put into place simplified mechanisms to implement them.
2. All those forcibly displaced from conflict-affected areas in NGCA and CGA should be permitted to register as IDPs and benefit from compensation, in accordance with the definition of IDPs in Ukraine's IDP law, and consistent with the *Guiding Principles on Internal Displacement*.
3. Extend the application of Temporary Measures suspending mortgage repayments for mortgagors within GCA and frontline communities who have property that has been damaged or destroyed as a result of the conflict.
4. Noting that there is a deficit of suitable housing for IDPs, efforts should be made to identify, map and utilise unused municipal properties for IDPs as temporary and permanent housing.
5. Recognising that landlords are reluctant to rent to IDPs because of tax implications, establish a tax break and incentive programme for landlords who rent to IDPs.
6. Establish a system of benefits or subsidies to support host families who provide accommodation services to IDPs.
7. Simplify procedures for civilians to cross between GCA and NGCA, open new checkpoints, and bring the orders regulating movement of civilians and goods in compliance with the Constitution and laws of Ukraine as well as international law.¹⁴
8. Ensure that armed units are aware of their responsibilities under international law to respect the HLP rights of civilians, especially those in frontline communities residing in close proximity to the contact line.
9. Provide for suspension of mortgage repayments on properties severely damaged or destroyed during the conflict.

To the *De Facto* Authorities in Non-Government Controlled Areas (NGCA)

10. Enable the resumption of humanitarian operations in NGCA in order to provide essential humanitarian assistance to conflict-affected communities.
11. Allow people who have left NGCA to apply for and secure a suspension of utility payments on their properties for the period of their absence.
12. Provide for suspension of mortgage repayments on properties severely damaged or destroyed during the conflict.

¹⁴ OCHA, Ukraine Humanitarian Bulletin, Issue 3, 1-31 October, 2015, http://reliefweb.int/sites/reliefweb.int/files/resources/humanitarian_bulletin_ukraine_-_issue_03.pdf

To UN Agencies, International NGOs and Other Humanitarian Actors

13. Acknowledging the need for a better understanding of the extent of damaged, destroyed, occupied and expropriated property, and the impact on the most vulnerable groups, conduct an assessment of HLP in NGCA. This should include an assessment of any outcomes of the announcement by *de facto* authorities to confiscate properties vacant for 45 days.
14. Undertake further research into the particular HLP challenges of displaced women, who comprise 63 percent of IDPs, as well as the situation facing older more vulnerable people remaining in frontline communities.
15. Recognising the possibility that displacement could become protracted, engage the Government with the aim of developing a durable solutions policy that incorporates the intentions of IDPs and conflict-affected populations, and supports their HLP rights in accordance with international law.
16. Noting the needs of the *de facto* authorities to better understand and act upon their obligations under international law pertaining to HLP rights, where possible, engage with the *de facto* authorities to educate key decision makers and administrators on applicable standards.
17. Noting the need to improve security of tenure for IDPs living in rented accommodation, engage the Government to explore options such as a tax waiver on the income for landlords renting to IDPs.

“The owner of the flat in Lysychansk would not allow us to register as IDPs so we were not eligible for any social benefits. Many of the landlords in Lysychansk are frightened that they may face taxes or legal issues or that the tenants won’t leave or won’t pay if they are registered. After a few months we tried to register as IDPs but the authorities would not let us. They said we were from Popasna district which is a government area, but we are from the part that is now controlled by the other side.”

Unregistered displaced women
NOVOTOSHKIVSKE

ACKNOWLEDGEMENTS

Researched by Simon Harris.

This report would not have been possible without the support and involvement of the Norwegian Refugee Council (NRC) team members in both Severodonetsk and Kyiv. Special thanks are due to Miradije Hodza, Sarah Adamczyk, Nataliya Dymkovska, Tatiana Stepykina, Iuliia Tralo and Olena Protsovska.

Particular recognition is also due to the researcher who prefers to remain anonymous, but provided 20 insightful case studies from the non-government controlled areas of Luhansk *oblast*. Special acknowledgment is due to the administration of the Luhansk *oblast* and cities of Novotoshkivske, Novotoshkovskoe and Popasna, to OHCHR, UNHCR, OSCE, ICRC, Shelter Cluster, DRC, People in Need and Right to Protection and their staff who generously gave their time and provided information and expertise for this report.

Finally, NRC would like to extend its gratitude to all those displaced and conflict-affected individuals and families who participated in focus groups and interviews and shared their personal stories and experiences for this research.

This document covers humanitarian aid activities implemented with the financial assistance of the European Union and the Norwegian Ministry of Foreign Affairs. The contents of this document are the sole responsibility of the Norwegian Refugee Council (NRC) and the views expressed herein should not be taken, in any way, to reflect the official opinion of the European Union or the Norwegian Ministry of Foreign Affairs; neither the European Commission nor the Norwegian Ministry of Foreign Affairs are responsible for any use that may be made of the information it contains.

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ОТКРЫТ