Addressing loss of housing, land and property rights of internally displaced and conflict-affected people in eastern Ukraine: steps towards restitution/compensation

NRC NORWEGIAN REFUGEE COUNCIL

Background

In its protracted phase, the conflict in eastern Ukraine affected 7 000 squire kilometers of territory with over 17 000 houses damaged and destroyed. Accompanied by displacement of 1,6 million people, it requires adequate procedure of restitution and compensation for the loss of rights, value, use, and/or access to housing, land and property, caused by hostilities in East of Ukraine.

Although several laws that consider the right to compensation for damaged/destroyed housing are in place, there are also considerable gaps in Ukrainian legislation as to mechanism of its implementation. Precisely the problem with compensation at the national level reads as follows: although Article 86 of the Code of Civil Protection provides the right to compensation under certain conditions, there is no mechanism of funds allocation in the state budget of Ukraine. Such legal gaps, coupled with financial burden of court proceedings, which most people just cannot afford, prevent many injured parties from claiming damages through formal proceedings.

As to the restitution, in parts of Donetsk and Luhansk regions controlled by Ukrainian Government, it is fulfilled only partially, through some inconsistent and fragmentary governmental support; in non-government controlled areas (NGCA) restitution of property is completely out of the question.

Some attempts to suggest efficient solutions to displacement in protracted conflict were undertaken by representatives of legislative and judicial branches of powers: laws “On compensation for private housing, destroyed or damaged during anti-terrorist operation” (Reg.No4301) and “On provision of housing aid to citizens of Ukraine whose dwelling has been destroyed (ruined) or damaged as a result of armed aggression of the aggressor state” (Reg.No6472) were drafted; a few positive court decisions were taken (Makogon and Petrova cases).

However, all the made attempts are not sufficient to move the state policy towards the protection of housing, land and property rights of individuals. Such situation not only exacerbates the daily lives of thousands of people who have lost their homes because of the conflict in eastern Ukraine, but is also inconsistent with international standards, fixed in European Convention on Human Rights, Guiding Principles on Internal Displacement and Pinheiro Principles.

Photo credit: NRC

Solutions for the problems of restitution and compensation can be taken from other countries' contexts, which experienced similar challenges. Administrative mass claim mechanisms, applicability of people irrespective of their bearing the IDP certificate, burden of proof put on government are key pillars of proper addressing the issues of restitution/ compensation.

Aiming to sensitise national and regional decision-makers about their responsibilities according to the international standards and to advocate for a greater compliance of the Government of Ukraine with international human rights and humanitarian law in restitution/compensation, the Norwegian Refugee Council brought together governmental stakeholders from the Ministry of Temporarily Occupied Territories and Internally Displaced Persons (TOT and IDPs), Ministry of Regional Development and Construction, decision-makers of the National Parliament and courts to share the international experience and best practices of restitution and compensation from other countries' contexts at the International Discussion **"Addressing loss of housing, land and property rights of internally displaced and conflict-affected people in eastern Ukraine: steps towards restitution/ compensation"** held on 26 September, 2017, in Kyiv.

IDMC Director Ms. Alexandra Bilak, NRC-Ukraine Country Director Mr. Christopher Mehley, HLP expert on Balkan states Mr. Massimo Moratti, NRC ICLA Specialist in Colombia Efrain Cruz, NRC ICLA Specialist in Myanmar Mr. Jose Arraiza, local civil society elevated policy discussion around the housing, land and property issues of displacement in Ukraine to key decision-making audience. Arguments presented in their speeches are gathered in this publication[1].

[1] "Addressing loss of housing, land and property rights of internally displaced and conflict-affected people in eastern Ukraine: steps towards restitution/compensation"

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Introductory Remarks

Christopher Mehley,
Country Director, the Norwegian Refugee Council, Ukraine

We have our small community that is growing, working on housing, land and property rights. I would like to welcome you all this morning to our discussion. The primary goal of today's event is to contribute to find the most appropriate solutions concerning housing, landing and property rights for people affected by the conflict, primarily in eastern Ukraine. Since 2014 the Norwegian Refugee Council has been working in Ukraine to provide assistance in protection to the civilian population affected by the conflict. Thanks to its work, NRC has a good understanding of numerous problems in housing and landing for internally displaced persons, houses losses along the contact line, and host communities receiving displaced. As we are experiencing now in fourth year, economic conditions of affected people deteriorated and caused reducing the living standards of the population. That is why addressing such issues as housing, landing and property rights is a core element of supporting these people seeking resilience. In Ukraine, NRC, together with other partners follow closely the steps of the Government and the Parliament to address the property rights of the citizens, especially the most vulnerable categories of the population with an aim to view if such steps are in line with humanitarian principles and standards of an international law. Norwegian Refugee Council is trying to assist as much as possible on the development of such initiatives. Today we will hear the experience of other countries and we will see to what extent it is applicable to the situation in Ukraine. NRC follows closely the land and housing property issues in many contexts and contributes to the protection of such rights. Therefore, the aim of today's discussion is to share good practices and to analyse lessons learnt by others in order to develop appropriate solutions here, in the context of Ukraine.

I would like to stress on some particular things that are important for the context of Ukraine concerning land, housing and property rights. First is lack of restitution and compensation mechanisms for people who have their house damaged or destroyed. Second is occupation of houses by militaries with no clear mechanism of legal qualification. Third is registration of real estate transactions, inheritance procedure and real estate in areas not-controlled by the Government. Fourth is access to accommodation for displaced people. And the last is access to housing credits and loans.

Photo credit: NRC

NRC is working to elaborate and provide recommendations for Ukraine in this context for consideration by the authorities, whether it's the Government or the Parliament. These three points can be summarised as following:

1) **There is a need to elaborate the procedure for restitution and compensation for the loss of rights, value, use and/or access to housing,land and property close to hostilities in eastern Ukraine and the specified law of Ukraine on combatting terrorism;**

2) **There is a need to establish ad-hoc commission that should be authorised to provide both formal assessment of damages and enforce restitution or compensation claims from the state budget of Ukraine;**

3) **There is a need of a comprehensive reparation program for individuals who have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their human rights as a direct result of the conflict in eastern Ukraine in line with basic UN principles and guidelines concerning rights to remedy and reparation.**

I believe it is important to stress that any progress in this context requires joint efforts. It is impossible to do it for any organisation or an entity alone. Progress is possible when we work together, perhaps, overtime, together with the government, with the Parliament, with the judiciary, civil society of course, and the affected population; and yes, with international organisations and partners. In this regard, I would like to specifically thank the European Union, as well as UNHCR who have been supporting us and are strong partners of NRC concerning land/property rights and, more generally, legal aid in Ukraine. They are important partners because they not only fund NRC, but they work together to address these issues both here in Ukraine (the Government, regional authorities) and also internationally. They are directly supporting the event today and we are thankful for that type of cooperation.

I wish you all a productive day and I look forward to talking with you during the course of the event and along the side lines.

Thank you for coming!

Protection of HLP rights of people affected by the conflict in eastern Ukraine: legislative initiatives tabled at the National Parliament

Oleg Nedava,
Member of Parliament, Verkhovna Rada of Ukraine

To start with, three and half years have passed since the moment of the first explosions in the East of Ukraine and the first people have experienced the property losses, human life losses. This is the moment of a great disaster for Ukraine. I would like to thank the volunteers first of all, who have reacted to the pain of the people of Donetsk and Luhansk regions. I would like to thank, of course, international organisations for helping us, for stretching us a helping hand at the very beginning of the conflict. Ukrainian state was not ready for that kind of challenges and we are still experiencing the lack of legislation and procedures that could solve the challenges and issues we are facing. For three years, we are trying to do something on this matter, to liquidate the challenges and the gaps in our legislation. There is a too much of demagogy in our Parliament and Government on this matter. There are a lot of political steps, insinuations and manipulations going on. A lot of people, politicians, they say a lot, but they do nothing.

Photo credit: NRC

In 2009, it was a big flood in the West of Ukraine; all Ukraine joined efforts to help people over there to eliminate the consequences of this flood. **We had the Governmental Regulations on how to compensate the losses that people have experienced due to the flood of 2009. And the first step of the Government now should have been to amend this Regulations to fit the needs of the people in Donetsk and Luhansk regions, who have lost their property.** But this has not been done because the Government says that today we don't know how many people have lost their property, we don't know how to count them, we cannot estimate the losses that people have encountered. There are a lot of other questions and Ukraine does not have money!

But now, we are losing the main thing that we should have: the care about people, the care about the population of Ukraine. I believe that constitutional rights are being violated today. And now we have to do everything so that people could feel strong, protected, with hope that the state will provide a chance to live a good life again. Two years ago we have worked on a draft law #4301 on the state compensation for the lost property. I will show you this draft law today, in these folders, there are more than 40 thousand signatures in its support. Due to the political situation influencing some of the decisions directed to the help for people to obtain their compensation, it was a lack of political will to have this law adopted. The main thing was that we need to define an aggressor-state who must compensate all the losses encountered by the people. But there is no such practice in the world. And I was told this practice is not yet developed internationally, it exists nowhere in the world. But then, first, **the state should fulfil its constitutional obligations and protect the interests of the people and only then consider who is the one to be accused**

for causing the need for compensations, whether it is an aggressor-state or someone else. But we did not want to wait until the government amends this by-law. And, together with my colleagues, we have worked another draft law #6472; we have almost found the best solution for all these issues, including political issues existing over there. So we hope this law will be adopted. In order to have it adopted we need to have a support in the country and at international level. We feel this support. We have already got some support to another draft law #4550 for an affordable housing for IDPs. We have felt a great synergy of a big number of people and organisations ready to start a joint work on solving the challenges faced by IDPs, at least to some extent. We are doing it step by step. There was first of all, a draft law #4301, then #6472, #4550 (this one is now adopted as the Law #1954). Last week we have adopted the resolution, a Regulation #140, stipulating the mechanism for IDPs and ATO veterans obtaining a compensation for an affordable accommodation.

In Donetsk region, for example, we have 500 thousand IDPs registered. And nobody knows how many of them will request an accommodation. To learn this, the Ministry of Regional Development, together with local administrations, together with the Ministry of Temporarily Occupied Territories should conduct the monitoring on this matter. This has not been done. But you should understand that in Donetsk region there are not so many free apartments to be used within the program of 50/50 loans under Regulations #140. So we need to construct and you know what is construction, even with the support of the Donetsk regional administration, headed by Mr Zhebrivsky who declared the readiness for such support, and told that at the cost of the regional budget they will double an amount allocated by the state budget. I mean, we rely on this support, and we estimate 270 mln UAH to be allocated for construction of a new housing. But you know, 270 mln, or 1 bln, this is still not enough. We have to deal with the land issues, with utilities, infrastructure, and so on. Moreover, we must build accommodation for IDPs where the job places exist, not where we want to. In Donetsk region, we will start everything from scratch.

We worked together with 40 parliamentarians and submitted the draft law #6515. We were trying to allocate almost 2 billion, but the draft was not even published to be voted, although even the Head of the Budget Committee was one of the co-authors, and many members of the Budget Committee were involved, so I hope they will support this budget request. But there is a counter-pressure from the Ministry of Finances[2].

Ukraine is moving towards Europe. And this is our responsibility to keep this movement on. We need to look at Europe, but we should not forget about the rights of the citizens of Ukraine. **It is necessary to do everything possible so that IDPs and ATO veterans, people who have lost their housing, could obtain a compensation and the state's attention.** We are going to keep working on it. I am thankful for the help of the international community on this matter for sharing your experience, assistance: finances, aid, consulting, emotional support. We really appreciate that. We will keep our joint work. As people say, together we are stronger, together we can reach the goal that we see in front of ourselves. Thank you for your attention and I hope this meeting will be fruitful, we will work out a new mechanism to get the possibility to fulfil the promises and provide the people with what they need.

[2] After the International HLP Discussion took place, MP Oleg Nedava submitted the suggestion to the draft State Budget of 2018 to allocate 1,3 billion UAH for this Housing Program's needs.

Displacement as global trend and threat: ways to overcome, contributions by relevant stakeholders to be made

Alexandra Bilak,
IDMC Director

The Internal Displacement Monitoring Centre – IDMC – is part of the Norwegian Refugee Council, that's why I have the pleasure to be here today. I came to Kyiv few days ago to participate in a meeting that took place yesterday to discuss a collective approach to resolving internal displacement in Ukraine. The discussion was very fruitful and it was based on experiences from other countries.

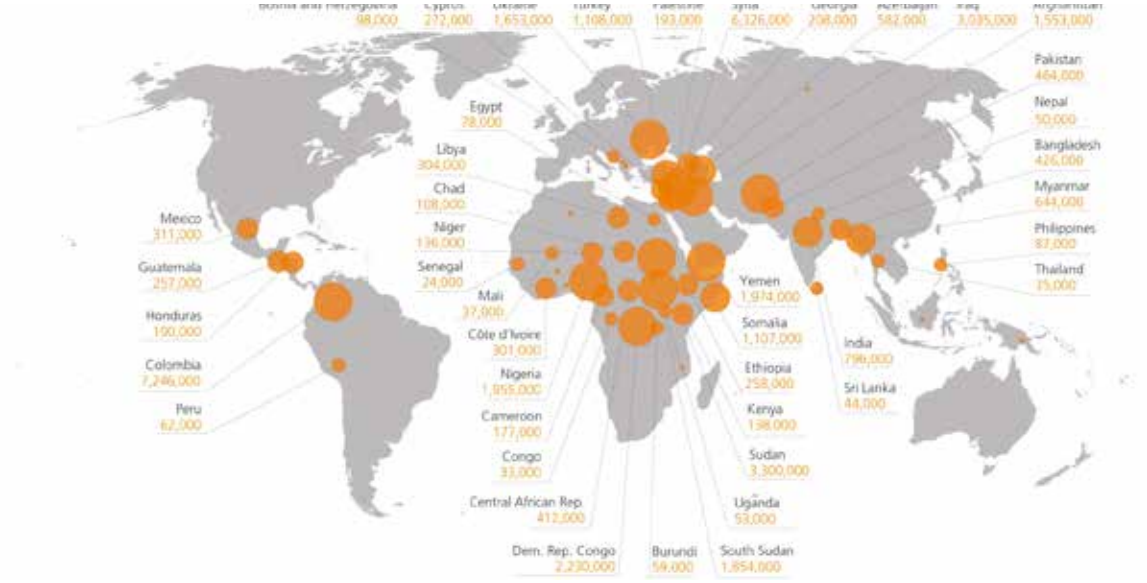
So I was asked to present a global prospective to this issue today. So in a sense, I will take a step back a little bit away from Ukraine to give a sense of a scale of some of the key issues linked to the displacement across the world. My organisation is basically responsible for monitoring situations with an internal displacement in the crisis context, conflict and violence. We also monitor internal displacements in the context of disasters that can be caused by floods, earthquakes, hurricanes across the world. More recently we also started monitoring displacement caused by development projects across the world that is also a major phenomenon causing millions of displacements each year.

Photo credit: NRC

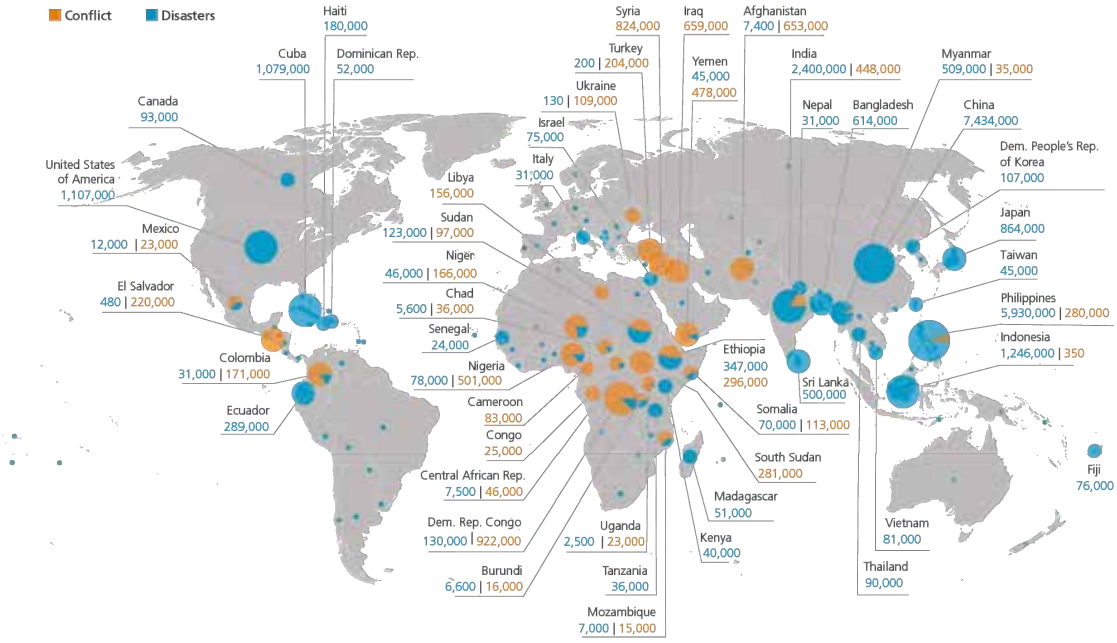
To give a sense where Ukraine fits in this picture and, perhaps, to give a comforting feeling that Ukraine is not alone facing this problem, to show this problem has a huge scale in other countries across the world. This is the map of the world we have published in May of this year to show the new internal displacements that have been recorded between 1st January, 2016 and 31st December 2016. We recorded totally 31.1mln new displacements caused by conflicts and by disasters: 6.9 mln by conflicts, 24.2 mln by disasters.

You can see on the map in orange the conflict-related internal displacement which takes place predominantly in the Middle East and Sub-Saharan Africa; and in blue are disaster-related displacement that takes place almost every year in Southern and South-Eastern Asia. The distribution of colours on this map is quite typical as of typical years. Some of the countries that were most affected in 2016, and this is also consistent with previous years' trends, were the Democratic Republic of Congo (almost 1 mln displaced), Syria, Iraq, Afghanistan, Nigeria and Yemen. On the other hand, the countries that have been hit by disaster-related displacement the most are China and Philippines. We have recorded staggering numbers of 4 mln in total. Now this is the map of the countries affected by a large number of IDPs, displaced due to conflicts and violence, and the large number of IDPs recorded within a long period of time. So, in the end of 2016, we are looking at 40.3 mln people who are currently internally displaced by conflict and violence across the world. Now, we do not have a cumulative number for people displaced by disasters, but we know that people who become displaced because of a disaster also tend to remain

Countries with largest numbers of IDPs as of end 2016 (conflict/violence), by IDMC



New displacements by conflict and disasters in 2016



displaced for a long period of time; so the numbers there, even if the data are missing, are still high too. I have just highlighted the **top 10 countries with the highest rate of IDPs right now: Colombia, Syria, Sudan, Iraq, DRC, Yemen, Nigeria, South Sudan, Ukraine, Afghanistan and Turkey.**

So, some of these countries are in the top 10 every year since we started recording in 2003. Most internal displacements take place in low and low-middle income countries; these countries' score is high in the global risk index, which means they suffer from a high exposure to weak governance system, huge income disparity. This means these countries are unable to cope with new displacements that take place each year, they are also unable to prevent internal displacement from happening and to cope with an impact when internal displacement happens. This means IDPs get caught up in a protracted displacement and they cannot cope with an impact of their displacement. And the global number keeps growing every year. You can see that the top 10 countries' affected by disasters scores are from medium to high in the risk indices, and the top 10 countries' affected by conflicts

scores are high and very high in risk indices. There is a clear correlation between high risk and displacement. This means, as I said, **internal displacement creates in these countries an additional stress,** I mean, **additional risk, but over time, it is not only individuals being affected, but for the whole country it slows down the recovery process.** So it does have an impact on the national level and this displacement continues creating condition for further conflict, further crisis and new displacements. So we are looking at the cyclical patterns of crisis. Now I would like to look at the issue of a protracted displacement, on a long-lasting and complex internal displacement. **We mentioned Ukrainian example and we were looking mostly at a protracted displacement. We do not have clear data that enable us to see the number of displacements nor the duration of the displacement. But in the most cases, the internal displacement that tends to last over three years, is not easy to be resolved.** Most of the displaced do not find a solution within a few months and they end up in a long-lasting situation in this displacement. The patterns of protracted internal displacement are quite diverse across the world as well. We were not looking at stagnant situations, where people are immobile and stuck in the displacement, but we look over a very dynamic, frequent and recurrent displacement. This is common particularly in communities of high disaster risk. So, in Bangladesh, for example, we see people and communities being displaced again and again, their homes are destroyed resulting in a gradual un-inhabitability balance. Also in many places across the world we record a secondary displacement of people that become displaced several times over a short (or a long) period of time. This is a case in Syria where we have reported in a Global Report this year that some families have being displaced up to 25 times over the course of the last 6 or seven years. It is also a very cyclical phenomenon in countries of Sub-Saharan Africa, Democratic Republic of Congo where people also have to move repeatedly over a short period of time.

Protracted displacement affects people and communities in very different ways across the globe. But what we can see is the needs of IDPs and their vulnerabilities evolve in course of the time, they don't remain stagnant. In some cases, they become even more acute than they were at the point of displacement. We have documented a range of different programs associated with a protracted displacement ranging from housing (the topic that will be discussed here), housing in urban areas, challenges of accessing lands and rebuilding livelihoods, problems of discrimination, in some cases, severe psychological traumas, problems of social integration and reconciliation. All of this constitute real obstacles to finding solutions and they affect, as I've said, millions of individuals every year in very different ways. We need to recognise also something that came up yesterday quite clearly, that the protracted displacement is mostly attribute of failed governments. In other words, it is linked to political obstacles first and foremost. This is why we found across the world literally from Syria to Louisiana in the United States, so even in high-income countries there are social, economic and political vulnerabilities that can also create a protracted cycle of internal displacement. And yet another important point besides the political aspect that we will discuss today and we have discussed yesterday as well is that a protracted displacement is often due to unsuccessful attempts of bringing the relevant actors together to collaborate in term of finding long-term solutions from the on-set of the displacement crisis over the way to its resolution. There is no collaboration between the prevention actors, working on a prevention side, and the people working on a humanitarian side and with the people in a re-development cycles. So what do we know about housing, land and property issues in this context and why are the housing, land and property of such a relevance not only for the discussion today but for all the discussions concerning protracted displacement? I think the core issue is really obvious, the displacement is inherently an issue of homelessness, the loss of one's home and abruption of one's life. So this issue is closely tightened with housing and this related both to the homes that people leave behind and also to the new homes they seek to build in a place of refuge. So **there are many challenges not only in Ukraine but across the world that lack reaching a solution and more specifically, an integration of IDPs in the places of refuge. I will add when it comes to Ukraine: the lack of compensation for the occupation of houses by the militaries, registration issues, access to housing credits and loans. In addition to that, more broadly, there are issues linked to insecure tenure of IDPs across the world, the lack of effective mechanisms to restore property rights, limited access to loans, sub-standards of housing/ inadequate housing in many cases, and the lack of legal frameworks, lack of the application of legal frameworks and access to justice.**

When it comes to the tenure security I understand this is an issue here in Ukraine, this is a major problem of IDPs across the world. **Without tenure security, IDPs are at risk of being evicted, as they often do not have a documentation confirming their housing rights and they cannot get recognition of the claim for property. This is applicable, this is relevant to IDPs who rent, who share and, in some cases, even who own accommodation. They can all face a tenure**

insecurity. What does this mean? It means that their situation in a short term is very uncertain one.

And when we talk about sustainable solutions, durable solutions for integration, this is a big problem. When it comes to the lack of effective mechanisms to restore property rights, we see that even when these mechanisms exist, as in the case of many Sub-Saharan countries, there is such a thing, as you may know, like the Kampala Convention in Africa that does provide for certain housing, land and property rights, for returning IDPs in their countries. **Yet, if the mechanism exists, there are other challenges faced, for example, the lack of capacity and resources to implement this mechanism, often due to backlogged and illiquid decision-making bodies become obstacles for IDPs claiming their rights they are entitled to.** Some cases might become much more complicated over time due to informal land practices which sometimes lead to more violence and conflicts which really threatens a post-conflict stability and can lead to more displacement subsequently. Limited access to land is also a major issue. Obviously, it's one of the most common features of a protracted internal displacement in Sub-Saharan Africa where people who are far from the lands or whose land has been taken out by others, have hard time when earning for living, particularly older IDPs. And when they try to secure a temporary tenure of a non-registered plot through chiefs or illegally occupied plots, this can also make them highly vulnerable and places them again in a situation where the security is very uncertain.

We have also seen this happening in Georgia where the local authorities in some rural areas have rejected IDPs requests for land over decades. And in Colombia, where IDPs had access to land but it is not titled to their names, and original owners have later reclaimed it, forcing people going away from these lands and becoming displaced again. And, finally, the issue of substandard housing. More broadly, this is the key obstacle for less wealthy IDPs who find themselves in a substandard shelter, either in collective centres or shelters in houses abandoned by the host families. All these problems become very exacerbated particularly in urban areas where a multiple displacement is either a reality or becomes a serious risk for many IDPs. The lack of tenure security makes the housing situation very precarious and leaves them vulnerable to a full eviction and homelessness. This may result in a lack of their resilience to a future shock, tends to increase the poverty and vulnerability.

So what can be done? As I mentioned, **a certain number of normative frameworks do provide a restoration or compensation for IDPs for the loss of their property, there are guiding principles of UN regarding displacement of 1998, stating clearly that competent authorities have the duty and responsibility to assist returned or resettled IDPs to recover to a possible extent the property and positions which they left behind due to displacement. And as I mentioned as well, the Kampala Convention for Sub-Saharan Africa also provides a right to remedy for the problems associated with displacement that can also include housing, land and property.** So, there are provisions, there are normative frameworks, housing, land and property are recognised as a key element in search for a durable solution. You can see here in the bottom, I have listed the reports that we published a couple of years ago, called "Home, Sweet Home" which we published in attempt to provide a toolbox to policy makers and operational actors to think through what approaches to securing housing for IDPs could look like in different urban contexts across the world. I will not go into details of that report, but, hopefully, it can be useful for those of you who work on these issues. I can provide a comparative analysis of what might work in the Ukrainian context.

Thank you very much!

International experience on restitution and /or compensation for loss of housing, land and property rights in the Balkans

Massimo Moratti,
HLP expert on Balkan states

I have been working extensively on the property restitution process in Bosnia and Herzegovina. Afterwards, I was involved in a study of a mass-claim mechanism for property claims in Kosovo. And, in recent years, the activity that I led was to run a legal aid system financed by European Union between Serbia and Kosovo, so that we could see how legal aid could assist the displaced persons in recovering or being compensated for their properties.

My presentation will focus on the two cases of Bosnia and Herzegovina, and Kosovo. These cases are now almost of twenty five years ago, since the first displacement in 1992. But these are two conflicts that are very important since the part of the experience gathered in solving these issues, contributed to the drafting of the so-called Pinheiro principles of housing and property restitution for displaced people and refugees. What is important to say: in these two conflicts, the relevant documents like a peace agreement in Bosnia and resolution of the UN Security Council 1244 for Kosovo established the right for displaced persons and refugees to return to their homes and also established their right to re-possess the property or be compensated for it. This was a novelty at that time and created a sort of a norm setting the standards that need to be achieved. However, we will examine today the types of displacements that are not the same. The way people are displaced affects the needs, the type of the remedies and solutions that need to be put in place. It also gives an overview, a sample of the problem that we are left to solve in the course of addressing the displacement and addressing the restitution claims. So, let's go step by step. First we provide an analysis how the conflict took place, what is the type of the problems and then we will see what the remedies are.

Photo credit: NRC

The conflict in Bosnia has lasted from 1992 to 1995. Bosnia was an ethnically mixed state, with Bosnian Serbs, Bosnian Croats and Bosnian Muslims, or Bosnians. As Bosnia was succeeding from Yugoslavia, the Bosnian Serbs did not agree with the succession at that time and they were trying to split the state, so that in future the parts of the country would be attached to Serbia. The same, at some point, occurred for Bosnian Croats. At the end of the conflict, Bosnian Serbs and Bosnian Croats were supported by Serbia and Croatia respectively. So this gave a touch of international armed conflict, has transformed the conflict into international armed conflict. And the goal was to carve up regions from Bosnia and Herzegovina and attach them to Serbia and Croatia. In this effort, the displacement was a key: the ethnic cleansing as it was called in the practice and the policy of forcedly removing population that was not the majority on the part of the territory to other territories was a key to achieve an ethnically cleanse and depopulated areas that can be then populated with other people

displaced from other territories affected by the conflict. So in each area, in each region it was a swap of population: one group was forcedly kicked out from their properties by an armed intervention, by violence, by forced eviction, and then another group was forcedly moved to an area controlled by an army of their ethnic group they were belonging to. In this regard, I mean, crimes against humanity, the genocide, it was fixed.

It was three and half-year conflict that resulted in 1 mln displaced persons, 1 mln refugees, 100 thousand people dead, and the final agreement that was relatively weak for the prosecution of the state. In the end, separatists in the regions that were trying to carve up the country, were reintegrated into the state; although their loyalty was always questionable, they were given with an authority to administrate their part of the country. Thus, the state was transformed into a federal state where the entities, the cantons were enjoying a significant level of autonomy, whereas the state had a relatively weak level of authority at those areas and always had to negotiate with the former separatists to the point that, for example, at the end of the conflict in Bosnia, there were two armies, three police forces, education and economy were transferred to local levels. So, you understand, it was a very weak state to deal with separatist authorities reluctant to implement the peace agreement. **The state authorities were trying to please the areas, because one of the points of the peace agreement was they, actually, legalize the war parties, because immediately after elections they obtained a sort of legitimacy. The same parties who were fighting, then were asked to implement the peace agreement. And this is one contradiction that is lasting until today.** The same parties that conducted ethnic cleansing, were asked and obliged by the peace agreement to reverse the cleansing and give back the properties to the people. And this is another problem, because the properties were not left empty. **The houses of the forcedly removed people were either burnt or occupied. So it was an extensive phenomenon of secondary occupation, where properties left by one group have been declared abandoned by the de-facto authorities at that time and other people were granted with a right to live in those properties. This was a setting at the end of the conflict. And the peace agreement gave to refugees and displaced persons the right to return to their homes, to have their property restored and compensated. The important thing is the agreement was signed in 1995, and the laws on the property restitution did not enter into force until 1999. We will see how these laws work now.**

Kosovo was not in a Federal Republic of Yugoslavia but an autonomous region within Serbia. It was a region inhabited mostly by Albanians (approx. 90%) and the remaining 10% were Serbs with a small number of Roma and others minorities. When Slobodan Miloshevich came to power in 1989, one of the first things he did was removing the autonomy of Kosovo and enforcing the police and army control over the region. As the result, the Albanian population kind of withdrew from the public life, they created their own system in 1989-1990; they called it apartheid since they were excluded from the life. For a long time, this withdrawal was peaceful, however, at a certain point, Albanians organised a sort of insurgent army, Kosovo Liberation Army, and, as it was expected, it provoked an armed and violent response by the government of Serbia, escalating tensions, fights and warfare. The international community was aware of their faults in Bosnian and Herzegovina, they were trying to contain the crisis, however, it was clear that the fear of the repetition of excesses and crimes that occurred in Bosnia led to NATO intervening in 1999 in Kosovo and bombing Serbia to compliance.

And in the end, Serbia was forced to comply and signed the Rambouillet agreement. **This is interesting for our situation: an international administration was created in Kosovo. The state authorities of Serbia: army, police, also the civil administration, withdrew from Kosovo and replaced by UN administration with executive power established in Kosovo, which is still in place at the moment.** During the NATO campaign, the Serbian forces took very tough actions against the civilian population and towards KLA at that time, causing the Albanian population to flee in mass from Kosovo. However, as soon as UN administration has been installed and Serbian administration withdrew, the overwhelming majority of Albanians returned. It started a new phase of the conflict with attacks against the Serbian population remaining there, sometimes coordinated, sometimes spontaneous. It was now the turn of Serbs to leave Kosovo and become displaced in Serbia. 230-250 thousand Serbs left Kosovo and went to Serbia.

So if in Bosnia the displacement was a kind of people swapping of population between different regions within the country under the same legal order, in Kosovo and Serbia the displacement was unidirectional; in fact, it was also internal displacement since Serbia was considering Kosovo as a part of their territory, but in reality Kosovo was under UN administration. These are two types of displacement. We see how it was solved, also what were the problems at that time and some of the

lessons learnt. It is important to explain that both processes were largely supported by international community not only with resources, but also with a special power, executive authorities, running international presence in Kosovo and Bosnia and Herzegovina. This was necessary to overcome the reluctance of the local authorities to enforce the property restitution processes, especially because the local authorities also were willing to maintain the ethnic distribution occurred at the end of the war. In Bosnia, we would say the conflict has ended in November 1995; it took three and a half-year after the end of the conflict for the authorities to pass a law granting restitution and compensation rights to the displaced persons and refugees. It was a certain level of international pressure to make sure this process occurs. The process in Bosnia was relatively easy. It was decentralised administrative process implemented at the level of municipalities, by municipal authorities in charge of this process, and these were the municipalities where the properties were located, so these were the same municipalities that have previously contributed to evicting, expelling people. So it was simple. All those who were presumed to have left the home due to the conflict, submitted the claim to the authorities; the authorities were passing a decision within a certain deadline and then enforcing the decision after a certain period of time.

In the decision, the authorities were confirming the property rights of the person and also assessing the housing needs of those who were occupying that properties, who in some cases were other internally displaced persons with legitimate housing needs and in other cases were just people who were not in need of those properties. So, this was relatively simple, the difficulty was just in enforcing and implementing the scheme. Besides the administrative process, there was also a mass-claim mechanism, there was a commission on property claims, created within the peace agreement and represented by international personnel.

However, the main problem of the commission on property claims was it could only confirm the title to the property, they were not assessing the needs of the people leaving the property and, moreover, they did not have the power to enforce their own decisions. So to enforce the decision of the commission for the property rights it was necessary to address the housing authorities at municipality. So, the problem of restitution took place across all Bosnia and Herzegovina, it was an effort that had an impressive coordination of international community in monitoring the municipalities, and also had a number of measures taken to enforce certain types of conditionality and to put pressure on municipalities to comply with their own decision. In the end, over the period around 6 years, around 200 thousand property claims were decided and enforced. This is quite significant and impressive amount, this is around 93% of claims submitted. So this was considered to be relatively successful at that time. This is how the process in Bosnia ended.

In Kosovo, the situation was quite different: the displacement was unidirectional. However, the belief of the international officers working in Kosovo on this issue was that the property restitution mechanism was going to address those claims on those properties that people have lost during apartheid times. The Albanians under discriminatory policies of the Serbian government were evicted from their homes, could not have their property rights confirmed, so the focus was on those persons. But, by the way the system was designed, it also allowed to Serbians who left Kosovo after 1999, to submit their claims. And in fact, when the claims came in, 90% of claims were coming from the Serbs displaced in Serbia rather than from Albanians who have been denied from their property rights in 1990-1999. This was one of the main discrepancies between the way the process was designed and how it was implemented. The process was also designed differently. I mentioned the mass-claim mechanism of Bosnia and Herzegovina. In Kosovo, it was the housing property directorate with the housing property claims commission. It was a centralised mechanism that learnt the mistakes of the process in Bosnia and Herzegovina and tried to put a remedy thereof. So this was a directorate with an administrative and enforcement service for the claims commission. So it was a mechanism when claims were coming in and were decided in mass: it was a kind of template claim and it was a number of decisions issued on the same template. After the claims were decided by the claims commission, the decided claim was going back to the directorate for the enforcement. One of the problems of the housing property directorate and the housing property commission is that initially it was designed only for residential properties, only for houses and apartments. And this was a shortcoming, because agricultural land was left out, business premises were left out. The reason why it was left out, this was considered to be for commercial disputes. In reality, leaving out this type of properties led to a wide-spread illegality with illegal construction going on because it was no remedy put in place, the courts were not effective, so this led to numerous cases of illegal construction and illegal expropriation.

In 2006, there was a new property claim mechanism put in place which inherited the housing property directorate: Kosovo property agency which expanded its mandate to cover also this type of claims. Housing and property directorate received 27 thousand claims, they considered all of them, but they did not enforce all of them. In 2006, after the new mechanism installed, it received 40 thousand claims and, by the end of their mandate in 2015, they considered all of them, but it is not clear how many of them were enforced. And these are numbers we need to keep in mind because now there is a third mass-claim mechanism in Kosovo: Kosovo property comparison and verification agency which received a task of comparing the property records and also of enforcing the remaining claims. The problem is it is not clear how many claims remained to be enforced and what type of enforcement is required for those properties. So, the data are quite difficult to interpret and to look into that and to draw conclusions. Few lessons learnt I would say from these two processes. First is compensation. Compensation was foreseen in the day of peace agreement.

However, it was never an effort put by the international community to grant compensation for the people who have lost their properties in Bosnia and Herzegovina. This was more a policy decision because people who wanted to return they were choosing to return as ethnic minorities to areas where they could be subject to harassment, discrimination and so on. So the resources were directed mostly to support this type of return. At the same time, there is a belief if compensation was provided immediately after the conflict, before a certain level of security and freedom of movement were restored, people would rather keep settled where they were displaced and return would not be favoured. Compensation and return was foreseen by the international community as a sort of a way of bringing together Bosnia again, to recreate the ethnic mix that characterised the country before the conflict.

In reality, what happened: once the property restitution process started functioning, people were repossessing their properties and those who wanted, could return to their properties, those who did not want to return, were changing or selling their properties, so functioning of the restitution process created a sort of market to trade properties, so that people were obtaining a kind of compensation by selling their properties and restarting their life. This happened on a very large scale, there is an estimation that most of the people have actually sold their properties rather than returning. In Kosovo, the compensation was foreseen only for a limited type of cases where there were conflicting claims, and this was decided by the housing and property directorate in 2005.

Today in 2017 such compensation has not been paid not even to one single case. So this is very, very difficult case. **The design of the property restitution mechanism had some faults and there is a need to keep the lessons learnt in mind when designing it, and you have to make a proper study.** In Bosnia, the assumption was the property rights records were destroyed during the conflict and the property rights records have been removed or forcedly alternated and they were not reliable.

In reality, and I can speak about it because I was working in a place where the worst ethnic cleansing has happened, even in those areas the property records were generally intact and not altered, the records were still there. The property has only been declared abandoned but with no changes of the owners of that property. The problem was enforcement of claims. It was not a problem to see who was an owner of a house, but how to move out one family and move back the other family. So this is where the problem was. Thus, when we are designing a property restitution mechanism, we need to have in mind that real enforcement can be a key and a claim cannot be considered solved until it is enforced as well. Same thing in Kosovo, as I said. The problem occurred in Kosovo because initially it was an idea that it should be Albanians who would benefit, who need the most this property restitution mechanism, but in reality it were the Serbs. And, also, the problem in Kosovo was that it left out a very important category of claims, categories of property which created a limbo that actually facilitated illegal actions over such property. And then, it was a rule of law exercise. In Bosnia there was a lot of politicians, authorities, police, even judges who have taken the properties during the conflict and they were reluctant to move out of these properties. At some point even one out of three members of the presidency was revealed to live in somebody's apartment. The authorities were subject to enforce the laws that were against their interests and their profit at that time. It was also a rule of law exercise because the people who exercised the war, the war participants, the very bad guys could file some property claims to the places where they were originally from and they had the right to have their claim enforced. So, you know, from the political point of view, this was difficult to enforce and to accept for the local communities. At the same time, enforcing property decisions meant

evicting families could have been displaced and they did not have an alternative accommodation or evicting the families whose members were the soldiers, veterans. This was also difficult. It was a rule of law exercise in Kosovo, because agricultural land of displaced persons in many cases was not used as their properties, was not used to house people, but used to launder money. Very often the plots of land were merged, and apartment buildings or hotels were built and so on. And this, actually, was the result of illegal activity, some representatives of authorities were members of this organised crime, using this to launder money. And these are cases that are still there in the moment.

In the end, housing schemes started only in the end of the property process, they are starting now, after 20-25 years, and these are aimed to solve the property and housing needs for those who were displaced during all these years. But the fact they are starting at this point means he number of those who really need the housing is much more that it was at the beginning.

Two things that are relevant to today's situation here: there were no interstate claims to the European Court of Human Rights between Serbia and Bosnia and Herzegovina because Serbia and Bosnia and Herzegovina entered the Council of Europe only after the most of the property cases have been solved and also because Bosnia and Herzegovina in its foreign policy was needing an agreement of all the present, including Serbs, so there are no such cases.

Between Serbia and Kosovo, clearly, Serbia does not recognise Kosovo, Kosovo is recognised by 110 countries in the world, but is not part of the Council of Europe and not the part of United Nations, so it is not possible to bring a case against Kosovo at the European Court of Human Rights. So this uncertainty on a legal status of Kosovo in future limits the actions that can be taken. Serbian authorities and Kosovo authorities (and they are similar in this as I see) they brought their claims against UN and against the temporary provisional authorities in Kosovo for the compensation for demolition of the properties during the conflict. So like assuming there is an overall liability of the state for these cases, there were 3 000 claims brought by Albanians, 18 000 claims brought by the Serbs. Today, no one of these has been solved, and, naturally, the UN administration has been trying to dismiss those cases or to close those claims and the issue is still pending.

Thank you!

Developments in protection of HLP rights of internally displaced and conflict-affected people in eastern Ukraine: 2014-2017

Iryna Oleinikova,
Head of Unit, Ministry of Regional Development

I will focus more on the topic of housing rights for IDPs. I would like to mention the progress of this year, we have the law adopted, which provided IDPs with opportunity to participate in affordable accommodation program (50/50 compensation). The Resolution No140 has been amended last week and now provides a procedure of exercising this right. However, the issue of funding is not solved yet; issue of funding is related to an issue of defining a need. As it was already mentioned, as of today, we do not know how many IDPs currently need a permanent accommodation and who needs a temporary accommodation (social accommodation). The temporary accommodation is designed to be provided for a half-year and not to be transferred to ownership or permanent use. Unfortunately, the conflict at the East is lasting already three years, so the temporary accommodation, which is in shortage today, becomes a permanent one for many citizens. But the issue is still on, since the Law on Protection of the Rights of IDPs stipulates the state should help to citizens to return to their homes after the conflict settlement.

Photo credit: NRC

Thus, a major attention should be paid to an issue of a housing need: who are those who really want to return to their homes and restore the rights they left over there (housing, land, property rights), so they need only temporary accommodation; and who are those who will need a compensation for the lost property and property rights and will need a permanent accommodation within the affordable accommodation program. So this is one of crucial issues to be solved. This also serves as a ground for our budget request to the Ministry of Finances, to show what amount is needed to be prescribed in the budget. Unfortunately, today there are no funds allocated for this purpose. For the next year, we have requested 1 billion UAH for funding the affordable accommodation program. But again, as Olena mentioned in the very beginning, we have the Parliament. And this issue is much politicised. First of all, we need a political decision and support of the Parliament.

Thank you!

Olesya Tsybulko,
Advisor to Minster of TOT and IDPs

The absence of an adequate statistics on IDPs is a major problem. This is fully the responsibility of the Ministry of Social Policy, since they linked the pensions of citizens from the non-government controlled areas to the certificate of IDP. Therefore, we have now a huge number of people that are registered as IDPs, but they reside in non-government controlled areas. It is obvious that such people do not need accommodation since they reside over there in their homes. One more issue is that IDP families are registered like families requiring social aid, although they do not reside like that. For example, a grand-mother residing together with children, grand-children and other relatives is considered to be a separate family on her own, although in fact they live together and they might not mind living all together. So this is a huge problem, the absence of statistics and lack of understanding of the number of those willing to return and unwilling to return. But we can look at social studies, enquiries.

According to the latest studies, 26-27% of people do not want to return to Donbas even when it returns and when it becomes safe again. Around 70% want to return upon various conditions: if economy is good, if it is safe, etc. But it is obvious that these 26-27% need a solution of their housing need, since they decided they will stay here. Thus, adopting a law on affordable accommodation program this year was an important milestone. Now it is crucial that the Parliament managed to allocate funding for this program. The Ministry of Social Policy requests 1 billion UAH, this is not that much in fact, but this will enable around 1600-1700 families to solve a housing issues. And we know we have around 1.5 mln of IDPs. So I would like to tell that we need to move forward. We should not forget about socially vulnerable citizens unable to benefit from the program due to the lack of these 50% for this program. For this category of citizens we are developing a law on social housing, that will not be transferred to ownership for a person at the first phase, but in 5 years, unless the conflict ends up and Donbass returns under the control of Ukraine, this person can obtain the title for such accommodation. And if the conflict ends up and the territory reintegrates, then the person will be entitled to choose whether to stay or return. This was the matter of discussion of the HLP TWG and within other discussions. **So, we decided we need to focus more on temporary accommodation for those people who cannot afford purchasing the permanent one, but also to remember that the time is flying; and if it happens so that our situation becomes like in Transnistria, these people will not be able to return, and their children will grow, so letting them stay in temporary accommodation for many years is not so good since they want to live today and here, and not in many years when (if) the territory is back.**

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I would like to state that 1 billion is a very small part of the amount required for improving the housing condition of citizens. After the law has been adopted, the registered IDPs became entitled to participate in accommodation program without being registered in a housing needs list. But again, this is one category. But we have over 700 thousand citizens who are officially registered in this housing needs list and they require improvement of their housing conditions. So how do you think, what is an overall amount needed to provide everyone with a chance to exercise their housing right? Of course, this is an assumption made on an average housing cost and a certain

number from the overall number of people in need of improvement of their housing.

1 billion goes for the affordable accommodation program. There are two institutions who make estimation for this program: Youth Housing Contribution Fund and the Subdivision of the Ministry of Regional Development. Again: this is an amount you get when multiplying an average housing prices per number of people in need of this program. The program is about the whole country, and not only about IDPs.

Thank you for attention!

Court practices concerning protection of HLP rights of IDPs and conflict-affected people

Lyudmila Solomakha,
Judge of Donetsk Court of Appeals

First of all, I would like to reflect on the previous speech. The Program is good. But later when you started mentioning the numbers and the data, I remembered the events of 10 years ago. When we already had such a youth program, when the state was covering 30% or 50% after the child birth. And I remember the court proceedings afterwards, how these young families were being kicked out from their apartments. So are any mechanisms prescribed in the adopted law and Resolution No 140 to prevent negative consequences caused by the unfulfilling of the financial obligations on covering this part by the state? You understand that the issue is when the loan is granted to the family, and the state covers the part of the cost. But when the state fails to cover its part, it is the family who is left under the liability. And the bank, in any moment, may ask to recover this debt and to expel this family.

The topic of the compensation for the damage of the property and housing caused by the armed conflict at the East of Ukraine have being studied by the Court of Appeal of the Donetsk region for three years already. Since 2015, we clearly realise that these issues must be solved on our own, we need to establish our own practice on this matter, so we started working on it. These cases as you might know, are to be solved by the first instance court and then by the Court of Appeal before going to the Supreme Court.

So, in April 2016, upon initiative of the Court of Appeal of the Donetsk region and with support of the Council of Europe, there was a first seminar organised for judges of Donetsk and Luhansk regions, together with legal aid centres. We have shared our experience and developed some ways to move forward. You understand that when the case comes to the court, especially to the court of appeal, it is already hard to change something. So it was important to work using such meetings and such seminars. You already know some practice on this matter, but I would like to concentrate on some aspects of this matter.

If one looks into the Unified State Registry of Court Decisions, one would see that the decisions on such claims are being delivered by the courts of Kyiv and Cherkassy. But I would like to remind to all of you that

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if you want to file a claim to the court, **there is Article 114 of the Civil Procedural Court of Ukraine stating an exclusive jurisdiction: any claim concerning the property shall be filed to the court exclusively at the court located in the same area where the property is located. Then the question is why the Court of Appeal does not react to this? Unfortunately, since 2010, violation of the court jurisdiction does not result in cancellation of the court judgement.**

According to the new Code that is being considered in the Parliament right now, such violation again will result in cancellation of the court judgement as it was earlier. So when a case comes to the Court of

Appeal, the judgement will be cancelled only based on violation of the jurisdiction. This means filing the claim to the next court instance. We already have the practice on this matter: the court in Solomyansky district of the city of Kyiv refused to accept a claim based on the exclusive jurisdiction rule, and the Supreme Specialised Court of Ukraine has agreed on that. So, keep this in mind. And if a claim is being filed at the location of an IDP, then, probably it is being filed according to IDP's new residence address, referring that the damage is caused by a crime.

But if you are referring to this basis, you are doing yourself a disservice, since the damage caused by a crime is subject to be compensated in compliance with Article 1177 of the Civil Code of Ukraine, that does not concern the events related to terrorism or anti-terroristic operation, so the basis for your claim is wrong. This is the first point to state.

Now about the second point. Mr. Nevada has talked about the absence of the legislation regulating these issues.

As a judge, I cannot agree with him on that. It's true, there is no mechanism of pre-court solution of an administrative issue on the damage compensation. Earlier we had a quite good regulation, offered by the Ministry of Regional Development: if the commission defined a loss compensation less than a certain amount, it should be compensated out of a local budget, and if over that amount, then the compensation should go through the Cabinet of Ministers. This is what we call a pre-court regulation of the loss compensation.

But, as of today, what concerns a judicial remedy, these mechanisms also exist, since the Civil Code still functions. And the Civil Code states that the civil damage must be compensated at its real cost, and we have a special law to indicate the ground for such compensation. Article 19 of the law on Fighting the Terrorism states that the damage caused by terroristic acts shall be compensated to the citizens out of the state budget of Ukraine in compliance with the law. **It means the amount of the compensation should be defined according to Article 1192 of the Civil Code, Article 85 of the Code on Civil Protection of the Population, with the further enforcement of such compensation from the persons that have caused such damage, again, in compliance with the legislative procedures.** So, according to Article 19, it does not matter for us whether the guilty person having caused the damage is defined or not. Many people tell that such relations are excepted from the provisions of the Code on Civil Protection. I cannot agree on that. In January, 2015, the Cabinet of Ministers has adopted the Resolution where the force-majeure situation in Donetsk and Luhansk regions has been stated. Moreover, if we look at the draft laws that are being developed in the area of compensation of the damage caused by these events at the East of Ukraine and Crimea, then we can see that they are referring to Article 19 of the Law on Fighting the Terrorism and to the Code of Civil Protection. Thus, they are interrelated.

What about the procedure of calculation of the amount? This is first of all the matter of expertise. If the housing was damaged but is subject to the further reparation, that it is directly the stipulation of Article 1192 of the Civil Code, Article 85 of the Code on Civil Protection of the Population; both articles state the same, that the compensation shall be calculated based at a real price of the property. In this case, a construction & technical examination should be conducted. If the housing is damaged severely and is not subject to reparation, then, in my opinion, the mechanism is defined by Article 86 of the Code on Civil Protection of the Population which stipulates as follows: "based on an average cost of construction of the housing in the respective region". Today, the courts just enforce all the cases based on an average cost of the housing. Then, when the case comes to the Court of Appeal, like, the last week, when we drafted judgement on two such cases when the court has enforced the compensation based on an average cost of construction of the housing, and, meanwhile, no one of these two claimants was willing to return the house and leave out the title of property for the land plot. **However, according to Article 86 of the Code on Civil Protection, it is a mandatory provision that the title of property shall be transferred from a claimant to the state. First, the houses in both cases have been already partially rebuilt, partially at the cost of humanitarian aid.** Thus, the Court of Appeal, in compliance with the fourth part of Article 10 of the Civil Code of Ukraine, has delivered to a claimant an explanation as follows: if a claimant himself recognises the house has been partially rebuilt, the house is subject to restoration, and the claimant does not want to lose the title of property for the respective plot and house, then the claimant should ask for conducting a building-technical examination. Unfortunately, the claimants refuse such examination to be conducted, referring to unwillingness to pay a high price for that. All kind of expertise examinations in the civil cases are subject to be paid. And if a party does not pay for that, we are unable to change something.

Therefore, since the parties have refused such examinations, their claims have been rejected due to the fact that the damage amount has not been proved. And when I told the lawyer: "You were at the proceedings on the previous case, you know what kind of judgement will be delivered in the event if you refuse from examination!", he answered: "We just need any judgement to be delivered, that's it." But, in my opinion "we need any judgement" is an ineffective manner of legal protection, because with such the judgement, if you later address to the European Court, the European Court, based on existing practice, will tell that the claimant himself refused to prove the damage amount.

And the cases of such consequences are already known last year. Three claims were recognised invalid due to unproven damage. Another question is the following: according to Article 19, it is up to the state to compensate the damage. We encountered a situation that reconstruction is being done at the cost of the humanitarian help. I am being told to not to take the humanitarian help into consideration. I do not agree. Chapter 17 of the Code of Civil Protection stipulates that material damages and aid to the people affected by a force-majeure contains a special provision on humanitarian help. Therefore, our civil-military administrations account all this and then provide these records upon the request of the court. In my opinion, as I have checked the court judgements delivered, such humanitarian aid has not been deducted.

However, this aid should be taken into consideration, because it is provided by international institutions through the state and is distributed by the state. If we take a look at the law on IDPs, it also contains a provision on humanitarian help that is provided to the state for the damage compensation. So, keep this in mind as well. The courts are functioning and working out these issues. The National School of Judges has developed a training for trainers of the basic course on the IDPs' rights protection. This course has been approved in February 2017. The courts are aimed to have the grounds to consider these categories of cases. Thus, first of all, the damage amount must be proven.

I would like to mention also the particulars of claim. **It is important to correctly indicate a defendant in the case. People sometimes indicate Ministry of Defence, Ministry of Interior, State Security Service and so on. According to Article 19 of the Law on Fighting Against Terrorism, the defendant in this case is the state. However, the state is the defendant that cannot come and sit in the court hearing. According to Article 38 of the Civil Procedural Court of Ukraine, the state must be represented by appropriate authorities. In opinion of the Court of Appeal of the Donetsk region, appropriate authorities that should represent the state within this category of claims should be the Cabinet of Ministers.** Since the Law stipulates "the state represented by the Cabinet of Ministers", it means, this would be the right representation, in compliance with Article 38. According to the Law "On Fighting Terrorism" this is exactly the body heading other bodies charged in fighting against terrorism: Government allocates money, solves organisational issues. And here it is a question of money.

Thus, when in the claims people indicate State Security Service, Ministry of Interior, Ministry of Defence, as I see, the Court of Appeal is right when answering "the indicated defendant is not appropriate". Moreover, since this is a claim on compensation at the cost of the state, of the state budget, there is already an established practice, that the State Treasury of Ukraine must be involved, because the Treasury is the body distributing the state funds. Of course, the representatives of the Cabinet of Ministers and the State Treasury claim they are not appropriate defendants, but we then reply them that no, they are not guilty in causing damage, they are not defendants, but they are representatives of the state, who must represent the state in the court hearings.

One more aspect that I would like to mention is that we had the cases when Luhansk regional administration was a sued counterpart although according to Article 19, the regional administration is not a subject to be defendant. By the way, **since March 2015, we have the law about civil-military administrations. Their duties include providing assistance in reconstruction of the housing, in compensation for the damage caused by terrorism. But again, within this law, these administrations are not representatives of the state.** But we can send them a request, whether this specific person who has addressed to the court, has been provided by any aid, and if so, what was the amount of such aid, so that this aid could be calculated and taken into consideration when delivering a judgement about the damage compensation.

The next point from our practice. Recently, we had a case when the house was damaged in 2014. In 2015, the owner died, and his wife filed a claim for compensation of the damage. I consider the arguments of the Court of Appeal to be reasonable:

the representatives of the state indicated that the house was owned by a dead person, and his wife did not provide any documents about inheriting his ownership. So when we start proceeding a case, the question arises: who is entitled to claim for compensation? What heritage is? Something you have just suddenly got. So, she has suddenly got a destroyed house. Then just accept it. I see here representatives of the legislative power, civic activists cooperating with parliamentarians. May be we need to solve this issue on a legislative level? Well, in this case the wife understood what to do, she went to a notary, obtained a certificate of ownership for one half of the house as a wife who remained alive, in order to become an appropriate claimant, and the second half she certified as the heritage. This is because within Article 1230 of the Civil Code of Ukraine, the heritor inherits the right to claim the compensation for the damage but only upon contractual liabilities. Here it was no contractual relationship between the state and the claiming heritor. Please, keep this point in mind.

In addition, when you are going to the court and filing a petition of appeal, some people say the court fee is a problem. Yes, the court fee is a problem. But when a claimant is addressing to the court, he/she should provide a proof of being unable to afford such a fee, and at this stage, the court can dismiss the fee payment from such claimant. However, when an issue has not been solved, and it is the State Treasury Service or the Cabinet of Ministers who are filing a petition of appeal and they win the case, then the burden of the fee will be put on our claimant according to Article 88 of the Civil Code of Ukraine. Because at this stage it is impossible to forecast like "in the event if you satisfy the petition of appeal, please solve the issue of the court fee due to my financial condition".

When I started to research on this matter, partly because of understanding the interests of the claimants who have been already suffering from these events, I found that according to Article 2 of the Law On Court Fees, the state is not listed among the entities subject to pay the court fee. But our defendant is not the Cabinet of Ministers and not the Treasury Service, but the state. So, when defending your interests in the court, it might be worth to emphasise that even if the court fee is paid by the defendant, it is to define whether such actions were legal to avoid this burden to be laid on the person on behalf of which you are addressing to the court. So, think about it. We do not have any practice on this matter yet. In one of the last cases, the Ministry of Justice paid 8 000 UAH. Later, when in our resolution on opening the proceedings we indicated that the state is not subject to pay the court fee, they quickly submitted a claim to return the fee back to their account. We returned them this fee so that later this 8 000 UAH would not be laid on a person left without housing and without court protection due to a wrong legal protection strategy selected. Probably, the claim could be satisfied in the event if the claimant ordered an expertise examination. But these are problems I see in this category of cases. By the way, the Court of Appeal of Kyiv left in force the judgement of the court of Pecherskiy district of Kyiv on compensation for the damage caused by the demolition of the housing in the area of the armed conflict, the expertise has been conducted, and the Court of Appeal accepted this.

Court decisions in the interests of the conflict-affected populations in Donbas as a «homework» for the Verkhovna Rada of Ukraine

Mykhailo Dyadenko,
the VRU Inter-faction Union "Social protection and rehabilitation of ATO participants"

I would like to tell that the conflict in Donbas has provoked numerous rights violations of many citizens of Ukraine. In order to restore or protect their rights, the citizens have been addressing the courts. Mrs. Solomakha told us about some cases and about general trends. This issue is in focus of our inter-fraction union. In general, our activities are going far beyond the protection of the rights of ATO participants. The inter-fraction union is headed by Oksana Bilosir. We also care about the issues of IDPs, as the union in whole and as every member-parliamentarian individually.

I would like to talk about the following: protection of violated rights in the court is an important element of the state with rule of law. However, this element is left for the last instance. In general, the state must act so that a person should not be forced to protect rights in the court, but has an opportunity to restore his/her rights or even avoid their rights to be violated. Of course, we understand it is impossible now due to the conflict in Donbas since the rights are already violated: the right for housing, for property, somebody has lost health, somebody lost their lives, so there is a huge number of legal issues. What has been done? Together with the judicial power, with Association of Administrative Judges, the round table has been organised in July in Verkhovna Rada: "Conflict in Donbas: Challenges, Threats and Legal Settlement Thereof". Within this round table, a comprehensive dialogue took place between the judicial and legislative powers, with some involvement of the executive authorities. The judges have mentioned the issues on the claims received. The judgements have been delivered for those claims; some judgements have entered into force. **And these judgements have demonstrated a problem existing in the country, that would likely to be solved by the state since the problem is gaining and will gain a massive scale.**

Photo credit: NRC

After this round table, the resolution has been drafted in a form of a parliamentarian request in September, directed afterwards to the central executive authorities, to judicial power. The key moment was a request to generalise judicial practice on the cases related to the conflict on the Donbass and communicate this practice and existing trends to executive authorities and to the Parliament with an aim to shape a working group. Then this group would take a task to improve the legislation. Another important aspect to mention, that has been already mentioned by Mr. Moratti is, as in Bosnia, the compensation for demolished property has been provided to hundred thousand people. In Ukraine, as

we can see, the issue of compensation is laid to the citizens themselves who address with this issue to the court.

However, the citizens are different; those who are more active, applied to the court; those who have resources, hired accomplished lawyers to draft a correct petition and such petition was proceeded by the court; but there are a lot of people who, for some reasons, due to their education level or due to their civic position, have the same problems with demolished housing, lost property, yet did not address to the court. Ukraine as the state must not forget about such citizens. Thus, at the level of legislative authorities, a solution is needed to be elaborated, a regulation on the issue of paying off the compensation. Another aspect in this context. In the event if the court delivers a judgement and this judgement is enforced, and the compensation is paid to a citizen or a group of citizens. In our reality, the state is unable to pay the whole amount of compensation at once.

Therefore, the mechanism is crucial for the compensation for the lost property, the lost housing. This is the matter of the social justice towards all the citizens who have lost their housing or property. This was one of the topic discussed during the roundtable and discussed by parliamentarians. In this aspect, the cooperation is required. So I would like to call for cooperation all the civic activists, the citizens and those professionals who work on protection of the citizens' rights, on compensation issues in order to jointly draft a legal act on this matter. As for now, we are at the beginning of our way. It is important to build this way in a right direction. This should not be some separate initiative. This must be a unique, comprehensive document, drafted jointly.

Thank you!

Ukrainian HLP TWG to approach the issues of assessment/ restitution/ compensation

Olena Lukaniuk,
HLP TWG Coordinator

The Housing, Land and Property Technical Working Group (HLP TWG) has been established in July 2015 with representation of UN agencies, international NGOs and local NGOs working in the field of legal aid to the citizens in protection of their rights on housing, land and property.

First of all, the starting point for our advocacy efforts is inclusion to the list of the persons requiring protection not only IDPs but also all people who have suffered because of the conflict. If we look at international documents, conventions, charters, we can see there the special terms, Ukrainian translation of which is absolutely absent. For example, residual: people who stay in the zone of the conflict due to the lack of financial possibility to move out; returnee: those who have returned. This means that from the point of view of legal regulation, there is a way to find out in order to provide qualified legal aid to the persons who need it. Should we choose the path of splitting these groups? Or uniting them? This is a concept issue of authorities having the right of legislative initiative.

From our side, as a technical working group, we are trying to provide an assistance to the state authorities. As such, we started to cooperate with the Ministry of TOT and IDPs. As a result, we have the study of international experience on ensuring housing for IDPs and compensation for the lost or damaged property. Our conclusions are really similar to those mentioned by previous international speakers today. **I would like to remind the main principle of legal regulation: the restitution, restoration of the lost rights is prevailing. And if the restitution is impossible, what is typical for a long-lasting conflict, then we need to talk about compensation. This approach enables to include all affected persons into the circle of legal regulation.**

It is good that in the second half of the year 2014 the legislative ground has been established with the purpose of protection of the IDPs' rights, it is good that such group as IDP obtained their legal definition. But within the protracted conflict it is not good to keep this group separated, it leads to the discrimination towards other groups. We can see this somehow on the example of the Law 1954, the so-called "50/50 law". IDPs are being further separated by this law on those who can afford to pay 50% and those who can't and therefore stays beyond such law. Moreover, as we have heard it is not possible to calculate how much people will be able to use this opportunity.

Photo credit: NRC

We need to think together over it and make conclusions. In addition, our group concluded that we need to cooperate with all stakeholders to elaborate joint solutions. As we see based on our experience, the principle of functioning of the state authorities and international organisations, in particular, international humanitarian organisations, is different. It often happens that the needs of local councils and administrations are not taken into consideration by international organisations because they work upon different principles. So, the

state authorities are not always able to accurately communicate their problems to an international community.

One more conclusion concerns claim commissions as a quasi-judiciary bodies to be created. This tool may be applied in various ways. If there is a general consent of the state authorities to launch such mechanisms, then all faults occurred in other countries within such mechanisms shall be taken into consideration, and international experience must be adapted to Ukrainian realities. As we already mentioned, the issue of restitution and compensation for housing cannot be separated from the land ownership and other property rights, because within the protracted conflict conditions, housing and employment issues become crucial for the persons affected by the conflict. However, for a long-term perspective, we will have the land and property issues coming up. Therefore, in our conclusion, our working group indicates the necessity to consider these problems. **And, the last point, we made a conclusion that is rather conceptual than legal: since the housing programs have a long-term nature, when planning and implementing such programs, an environment of functioning of such programs should be taken into consideration. Not only the beneficiaries of such programs should be satisfied but also the whole community where this program is being implemented.**

This is the principle of urban master planning, that we would like to bring to your attention as the main principle, since we have here representatives of legislative, executive and even judicial power. We are also ready to cooperate with everyone to implement all the principles of international laws and practices mentioned by previous speakers today.

Thank you!

Actual needs and aspirations of IDPs in protecting housing, land and property rights vs present state of things

Ruslan Kalinin,
Association of IDPs

I would like to start with numbers. Different numbers of IDPs have been quoted today, somebody told 1.5 mln. I will tell you an accurate number: as of 21st of September 1mln 592 thousand IDPs have been registered, which is 1 mln 295 thousand families. Among these, 452 thousand are of a labour pool, 247 thousand are children, 55 thousand are people with disabilities and 815 thousand of pensioners, which is more than half. More or less the proportion is the same for these three years. Donetsk keeps a leading position by the number of officially registered IDPs: it is 518 thousand IDPs, 314 thousand out of them are pensioners; Luhansk region: 297 thousand with 216 thousand pensioners; Kharkiv region: 195 thousand IDPs with 97 thousand pensioners; in Kyiv, 175 thousand and in Kyiv region 63 thousand IDPs. This was the official data based on registered number of IDPs.

Photo credit: NRC

Let's now talk about how much IDPs we have in reality. Our Association often visits Donetsk and Luhansk regions and talks to IDPs, to representatives of social care services, and upon our data the real number of people staying there is about 20-30% from the total number. I guess if remind you numbers, like for Donetsk region, 518 thousand of IDPs including 314 thousand pensioners, you would hardly believe that all these 314 thousand pensioners have left their home, the state does not support them, they rent accommodation on their own, living on the controlled area. Some other numbers: upon the data of the National Monitoring System, the most crucial question for 70% of IDPs is accommodation. 66% out of them are renting accommodation on their own, 22% live at homes of their friends or relatives, 9% live in the collective centres (we do not believe this data, we consider it is just 1 or 2% in such centres) and only 1% has afforded to buy a new estate for accommodation. This is the situation in reality. Thus, we can tell that we have around 1 million of IDPs. It is obvious that all numbers are approximate. This is what we could calculate when talking to people and visiting other regions.

We talk a lot about issues and problems. However, **I would like that at all the conferences and gatherings we would rather talk about specific solutions, what can be done, what must be done. Yes, we have some wonderful programmes that are not functioning in fact. So, we believe the state must adopt an effecient comprehensive programme, a strategy of the state on solving the issues of IDPs. The strategy must not be too extensive. Let's just have 5 to 10 points in this strategy and let's just start implementing them.** Now, in fact, for three years we have nothing. Why I insist on such a program? Let's have a look on the experience of other countries. For example, Georgia with 275 thousand IDPs that is 6%

of population (we have like 2-3%). Before 2007, they were not much working on IDPs' problems. And only in 2008, after the comprehensive state program has been developed and adopted, the reforms have been done, the housing and other programs started being implemented, international donors have been involved, and now, after 9 years of work, almost 50% of IDPs have benefited from this state program and have their accommodation issue solved by this or another way.

Why international donors do not help Ukraine? First of all, because the donors do not see a clear concept of the program provided by the state: what the state is going to do and how the state is going to spend the money. The state has several ways to solve this issue. First: to do everything to push IDPs to return to their home. Second: to do everything to help IDPs to be integrated into the new local communities. I believe that the first option is unacceptable, since the conflict is going on. So we need to work on integration. Why am I stressing on this is because I did not notice that the authorities are ready to work and to insist on active integration of IDPs into the local communities.

Concerning the program and our vision and proposal: we do not have any delusion that we will provide housing for 1 mln IDPs in one year. This is not realistic.

We do not make estimations like some Ministers who take the number of IDPs, multiply this per flat cost and tell "this is how very much money we need". We want like in Georgia, 2, 5 or 8 thousand flats must be provided each year, something must be done on a regular basis to solve the issue step by step. Now, after these three years we are not able to tell that "here is the number of IDPs that obtained accommodation through us". Not even 100 or 150, we are not even talking about thousands. So what is our proposal?

Our concept is aimed at focusing assistance on those who need assistance the most. In 2014, when everyone was leaving their home, everyone had a difficult situation. **Now is 2017, the situation has changed and the concept should be changed. We should help those who are in need the most, to the most vulnerable categories. Therefore, we offer implementation of a vulnerability assessment system like in Georgia, when each family obtains a certain number of vulnerability points, depending on the number of family members, whether one of the members has any disability, on the number of children in the family.** Then, basing on such vulnerability assessment system, a queue for housing provision will be shaped. In addition, we propose to revise the social payment, not the amount thereof, but the categories of those obtaining it. Every year, the state spends around 115 mln USD for social payments to IDPs. These are official numbers by the Ministry of Social Policy. So, if we redistribute this amount to most vulnerable categories, like families with many children or with disable family members, and cut the payments to working IDPs, then it is hard to calculate, but around 30-50% of the total amount of social payments can be saved. This money can be then re-transferred to housing needs. This is my very specific, very open answer to the question "Where we can find the money?" This is an unpopular measure. But this is realistic. Just redistribute an actual amount. Usually when being asked "Where you will find the money?", people do not have any answer.

The next point: we need to launch the IDP Registry. Not like it exists now. If anyone among you has seen how the Georgian registry looks like, it is functional, it enables the work, to obtain the information. We propose to launch the registry based on the Georgian registry, so that it will have the detailed information on every IDP, the needs thereof, the social payments they obtain, the housing assistance received (if in future it will work). So the donors will be able to obtain a clear information from this registry what are the specific needs of specific IDPs, like diapers, or medical pills, so this registry will show a clear picture for IDP families. Such registry is needed to be launched ASAP. Moreover, our volunteers and our member organisations have developed a raw version of such registry, they will soon present it.

The next point: as you know, all IDPs are still keeping their IDP certificate in the paper form. We offer to make an IDP certificate in the form of a plastic card, like it works worldwide. First, with such an IDP card, we can easily fill the data in the IDP registry. Second, this IDP card will be also social ID card. We have a good example of ATO veteran's card implemented by Ukrainians Together NGO. They claim such card enables saving up to 1000 UAH every month. So we also want to discuss with the big retail chains an option of the social corporate responsibility from their side. Again, the state expenditure is minimal in this case.

Next: housing. Again, let's look at Georgia. Some people are residing in the collective centres. I mentioned in the beginning an official percentage, it is 9%. But we believe it is just 1 or 2%, based on the data we obtained in response of our requests to all regional administrations. This is a small percentage.

However, we propose to enable people to register the title of the property, like it has been done in Georgia. This is a small number, but at least some people will have their problem solved. We have also requested from regional administrations the list of potential objects subject to reconstruction; we expect these objects to be then distributed among IDPs, again, with the right to register the title of property.

We insist that IDPs should have an ownership of their housing.

Next: the law 1954 has been discussed today. I agree with it. It is important to adopt the Budget-2018 and consider there an amount for housing for IDPs. Of course, we cannot allocate 20 or 30 billion UAH, of course it will work for a part of IDPs. However, at least we need to start with something. Later we will see how it works, whether people will address for this assistance. And after that, having some statistics on the program launched, we will be able to plan the program budget for the next year, whether increased or reduced. In my environment, people whom I am talking to, they are ready to take the loans with 7% interest rate or take the 50% assistance for the flat purchase. Thus, I am sure we will have people ready to participate in such programs. There is no single and universal formula for everyone, every segment should be considered on an individual basis. In this case, we will solve the problem for a solvent segment, but at least for this segment it will work.

The last point: we want to offer a program that already functions in employment centres. This is when they grant a certain amount to launch own business. I will not speak about this programme in details, I am sure many of you know about this. So, we want to start the similar pilot projects, when IDPs can obtain a grant of around 1000 USD for launching their business. Of course, they must deliver an accurate business plan, this business plan must be estimated and approved by special commission. Of course, for this period an IDP will not receive any social payments.

This was, in short, the vision of my Association. These are simple steps yet enabling to start with something and then evaluate the results, because without this, we do not see any results for the last three years.

Restitution/compensation experience from Colombia

Efrain Cruz,
NRC Country Office, Colombia

I was asked to share the experience of Colombia on land and house restitution in the frame of an armed conflict we are having here. I will point out some facts from the background here in Colombia. We live in armed conflict more than 50 years. In Colombia we have at least three guerrilla groups: FARC, ELN, EPL. We also have other criminal gangs who call themselves military groups.

Photo credit: NRC

Perhaps, you have heard about the peace agreement here in Colombia. But not all groups signed it, it is mostly with FARC, the most representative group here, with almost 14 thousand men in this group. We still have an armed conflict with other groups, causing displacement of people and taking away their housing and lands. But the intensity is lower and the context has changed a lot. This violence history lasts for more than 50 years and caused already 7 mln officially registered victims. Here the government is entitled to decide whether to recognise a person as a victim of the conflict. Among these 7 mln, 6 mln are IDPs, and the total population is 40 mln people. This is a huge portion. Also, 5 mln hectares of land is abandoned. The numbers can vary depending on the source of the data. NGOs and universities talk about 5 mln, the government says about 3.5 mln hectares of land. If we talk about 5 mln hectares it is a big plot, but 3.5 mln is also huge. People are losing their land due to the conflict, but we have also had this problem before, people have been losing their land for 100 years. A huge number of people are moving to big cities, especially Bogota, where there is no land. And their land is being appropriated by the people with economic and political power or by the irregular armies controlling that territory.

In Colombia we have a huge disproportion between the people who are living on the fields and the ownership of the land. Our Gini index for land is 0.86% which means few people are owning a huge portion of land. That land is not productive, it is used for other purposes more than cultivation or being provided for IDPs. The land is used for arms, for illegal mining, that has huge impact on the environment. And over 60% of rural population do not have their land. There are few people who are informal owners of the land. We have also a problem with the registry, with the database of the land that shows the ownership the rights over the land.

In that framework, in 2011 our government has issued the "victims law". This law's objective is to give back the land to the victims of the usurpation, and also to help to return victims of the armed conflict. We have 5 measures: compensation (giving money to the victims of the armed conflict), land and house restitution; we have basic help services; satisfaction (symbolic measure provided to victims to be satisfied in their victimized state), and also government has to ensure that there is no repetition of those acts.

The restitution, that is kind of reparation public policy, pretends to create sustainable condition for internally

displaced population by encouraging their voluntary return to their homes and also by implementation of ad-hoc re-cultivation projects in order to give them economic independence, and also by recognising their ownership over the property that they have lost. This public policy of restitution is not rural policy to distribute the land, but this is to return the lands and the houses to people that have it lost, to give back the land peacefully and also to recognise the ownership title over this land.

With this policy, in 5 years, 216 700 hectares have been returned out of that 3.5 mln hectares that have been lost. We still have too much work to do, because we have another 5 years; perhaps, they can extend the period of application of this law, but we know now is that the law has at least 5 more years of implementation. Even though we faced a lot of challenges in implementation of this law, this restitution policy helped to save 2 000 IDPs from an extreme poverty, because they have returned to their land. This is a good business for the government, because this victims law and our entire legal framework obligate the Government to provide the humanitarian assistance; it means 7 mln people are entitled to claim a humanitarian aid from the Government. And such humanitarian aid must be kept being provided until the people overcome the situation of victimisation and poverty. It is better for government to invest in the land restitution or housing restitution and implement this public policy than to keep providing humanitarian assistance to this population within an indefinite period of time. It has been also an opportunity to have the governmental presence in historically affected areas and regions of the country. Colombia is a large country, and governing a large country is challenging, because, when you have a weak authority, you don't have the chance to be present in all the regions; this provokes violence, corruption and other bad things happening in that regions.

But with the land restitution, the presence of the government is not only military, it is also social presence. This is giving legitimacy to the authority and providing opportunity to the population to establish new channels of communication with the authorities: not only through the military presence of the government, but also due to ensuring the participation of the population in establishing the public policies not only on the land restitution, but also other social policies being implemented, especially those policies that have been stipulated within the peace agreement with FARC guerrilla movement. This is like a very wide framework of what is happening here.

The land or housing restitution process is a judicial process. So there is a judge who decides whether the victim or the claimant has the right to return to the land. In that judicial process everyone should prove that they have a right to own this land.

When the judge decides that the victim has the right to obtain this land back, the new-occupant has two options: 1) To prove that he is legitimate on this land, he has acquired this land bona fide, in a good faith: then he has the right for compensation. Compensation is either receiving another plot of land with the same characteristics or he can receive an economic compensation in a value of the land he is leaving. 2) If the occupant cannot prove his legitimacy on this land, he should be evicted from this land. Here, the government has a lot of troubles. We are not a rich country and there are a lot of people who cannot prove their rights when facing the judicial process but still they are vulnerable people because of the poverty. And when you evict such a family in order to give back the land to the claiming victim, you also create a social problem there. You are again displacing another family that might not be a part of the armed conflict but is poor and vulnerable. So the government has created a "secondary occupancy program". If the evicted occupant is poor, he should be included in the programs of rural reform, developed by the government. This is how it works: the occupant leaves the land given back to the victim once he has a chance to start living in another part.

The issue of external funding support from international partners is a very interesting.. **When all of the discussions about the problems with the land in Colombia started, it was because an international cooperation was putting this on the table for the government. At that time, like 10 years ago, the national government was denying existence of the land problem in Colombia, assuming that the problem in rural areas was the violence against the rural population only, but not the land grabbing, the land dispossession, or victims. So international cooperation started to provide resources to NGOs, to researchers in order to determine what is happening in rural areas, what was happening to the land when internally displaced population was leaving their homes.** So, inside the groups of NGOs working here, they started talking about the necessity to protect the rights that people had over the land. They were not talking about the restitution at that time, it would be too hard to put it to the agenda. But they were saying like "if we cannot arrange restitution, maybe we have an opportunity to protect the IDPs

rights?" Obviously, if a person is displaced, he cannot exercise his right. But we can protect this right to prevent loosing this it in a formal way. And protecting these rights made possible to assess the impact of these events over the rights of the people. Also, it was the first step to know the location of the lands, so the results were good. With these results we started to talk about restitution. We told "yes, we have protected the rights of 3 mln people in Colombia. What are we going to do with these 3 mln rights? We have to do a restitution policy." We started to talk to the national government about these needs. And in 2011, when the victims' law was being discussed in the government, the work that has been initially funded by international cooperation was very useful to have in mind an extent of this restitution policy. Then, when the restitution law started working in the first years, the government did not have a technical capacity to move forward to an implementation of the land restitution policy. And international cooperation helped a lot, starting with funding the first established land restitution units. And these units are still receiving some resources from the international cooperation: machinery resources, some technical assistance in implementation of the law. International cooperation has been a key factor of the success of the restitution process here in Colombia.

Thank you!

Restitution/compensation experience from Myanmar

Jose Arraiza,
NRC Country Office, Myanmar

In my experience of the property restitution in a conflict-affected society, both in Kosovo and in Bosnia and Herzegovina, in Myanmar it has become obvious that special human rights violations require special remedies. It also requires a mass-claim mechanism developed for a concrete type of claims. In this case, either restitution claims, or claims that might result in compensation. And this is the main recommendation that we are suggesting to the Myanmar government, we are advocating a restitution mechanism for Myanmar long-standing property right violation.

I will talk now about Myanmar to give you an idea how different scenarios may look like. I will describe Myanmar divided in 4 different scenarios. First of all, we have the states of Shan, Kachin and North-East Myanmar where we have an ongoing conflict, ongoing displacement and very little chances for displaced persons to return and recover their properties; there are ongoing clashes between several ethnic armed organisations and the central government; we have more than 100 thousand displacements. Then we have a very different scenario in South-Eastern Myanmar where there is an ongoing civil war since Myanmar independence between ethnic armed organisations and the government. This ethnic civil war was especially hard since the beginning of 1990s, and became easier the past 5 years, thanks to the bilateral cease-fire agreement with these ethnic armed organisations. And we also have a nation-wide cease-fire agreement that has been signed mostly by ethnic-armed organisations on the South-East. This second scenario is much more amicable for property restitution scheme, because there is a relative peace, there is peace process and there are some things being discussed including land, housing and property rights. **However, in the NRC's opinion, the housing and property rights are not properly addressed within this peace process.**

Therefore, we are advocating establishing a special mechanism as I have mentioned in the beginning. The third scenario can be called a "dry zone"; it happens on the flat land of Myanmar, in the centre, Delta region, North of the Delta region.

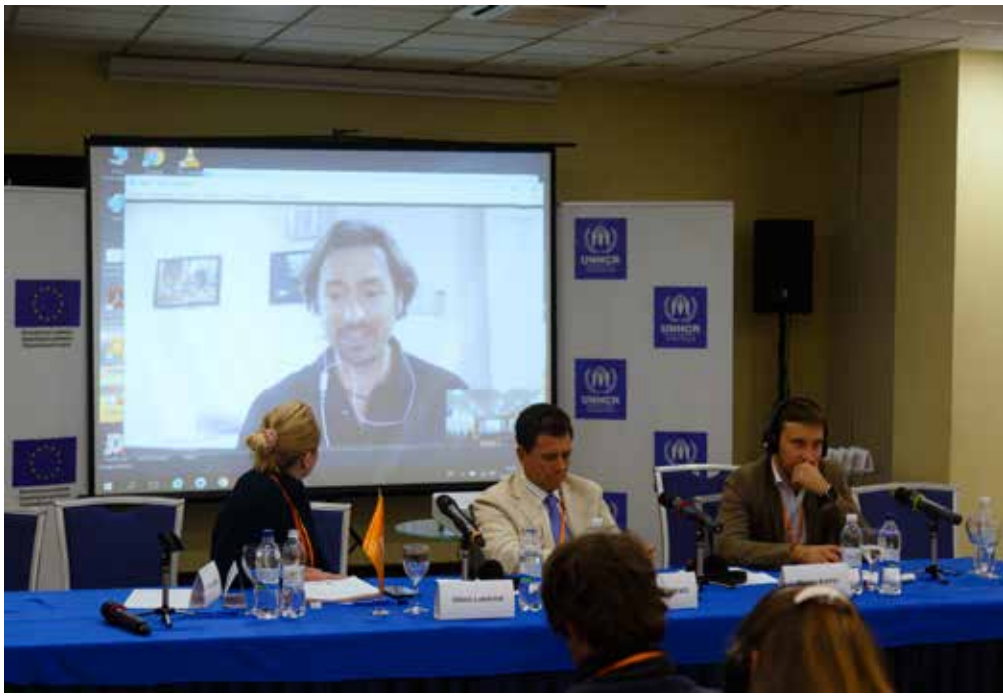

Photo credit: NRC

This is the area where the rice is cultivated. We also need there a programme of the land restitution because during military junta period (1962-2011) there was a considerable recurrence of the land grabbing. This land grabbing was done mainly by military groups together with the local authorities, and also private companies. There is a bunch of claims concerning that unlawful land acquisition. This is the third scenario in Myanmar. Then, the fourth scenario is in Rakhine state, on the border with Bangladesh. Currently, it is the scenario of the forced mass displacement with more 430 thousand people who are identified themselves as Rohingya Muslims who have been expelled to Bangladesh. The problem

with Rakhine state refugees is that majority of them do not have any property records because the majority of them are undocumented stateless persons who have not been recognised as citizens neither in Myanmar nor in Bangladesh. It is basically intermediary population suffering from a considerable human rights violation. The situation of this minority is comparable to what happened to Gypsy population in Kosovo, who also did not have property records and were almost unable to recover possession.

Now, after this introduction. I would like to talk about general trends that can be interesting for a comparative study with your situation in the area of the restitution and peace process. **When there is a peace process, it is very important to incorporate the issues of the land, housing and property rights into the process, because without addressing the property issues, the conditions causing these issues will be remaining. It will be tensions in the communities, between communities and army, between large companies, etc.** This is one important thing in Myanmar.

The second important issue is the legal reform. Between Myanmar independence and 1988 this state had a socialist regime based on the corporative management of the property. It is only after 1989 the reform leading to the market economy took place. What is the problem? The reform modernising the land market have not taken into account the rights of actual users of the land. The typical scenario for Myanmar is that there is a large piece of land that has been cultivated by farmers for many years, is suddenly sold to a company by the government. And, obviously, this leads to social unrest and serious tensions between communities and the government. Unfortunately, due to the legal framework in Myanmar, there is still a framework of an undisciplined democracy or of a semi-authoritarian regime, where the legal framework is used to press on farmers, just because of their participation in protests, etc. Again, there is no easy remedy for displaced persons or farmers having lost their property due to the legal expropriation. In absence of a remedy, we have social tensions, protests, people going to prisons, etc. It is not an easy situation. To give you an idea, the law on expropriation is a law from 1894, from the 19th century. Obviously, it does not comply with international standards on the property rights.

The criminal procedures that are used to prosecute the farmers are also from the 19th century. Basically, we need a legal reform. There is National Land Reform, introduced by the government last year; there are good points in this reform concerning the restitution procedures and customary rights. Unfortunately, the new government does not support this reform. So, there is again a problem.

It is to mention a parallel land management system that might be an issue for Ukraine as well. Basically, in Myanmar, the ethnic armed organisations have created their own system of governance, their own system of land registration; therefore, you have territories in Myanmar that are not subject to the law of the central government, but to a sort of a parallel structure. Of course, this is not good situation for our beneficiaries, for small proprietors, it creates a number of problems. One of the problem in this process is bringing together these two systems: one of the ethnic armed organisations and other from the rule of law, of the government, of the Republic of Myanmar.

About international involvement, international actors who are advocating and putting pressure on the local authorities to ensure peace process is ongoing and these issues are addressed. In Myanmar, in the post-colonial society, there is a lot of reluctance to take advise or take recommendations from the international community. There are a number of ethnic-based organisations and human rights organisations that are actively proposing to include into the peace process the policies that are in line with, for example, Pinheiro principles. Pinheiro principles, for example, are part of the Karen National Union Official Land Policy. Then, when it comes to an international support, there is an international donor called Joint Peace Fund, which brings together 11 countries, most of which are actually Western countries, and also Japan, Australia and some Asian countries. This fund promotes inclusion of the vulnerable communities into the peace process and promotes the peace process to be in line with the international standards. There is some influence, but when it comes to South-East area, this influence becomes much lower in reality.

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Addressing loss of housing, land and property rights of internally displaced and conflict-affected people in eastern Ukraine: steps towards restitution/compensation.

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