

## COMPENSATION FOR PROPERTY DAMAGED OR DESTROYED AS A RESULT OF THE CONFLICT IN EASTERN UKRAINE: KEY MESSAGES

### ●●●● BACKGROUND

- Continued hostilities in Luhansk and Donetsk regions has led to extensive conflict-related damage to civilian property on both sides of the contact line, with around 50,000 residential buildings damaged since 2014, of which an estimated half have been repaired (80 per cent in GCA)<sup>1</sup>. In addition to the houses not repaired, new damages continue to be recorded<sup>2</sup>. Conflict-affected people in eastern Ukraine should have access to **an effective remedy to claim restoration of their Housing, Land and Property (HLP) rights**, in particular to receive compensation for damaged or destroyed property.
- **The right to property is enshrined in international human rights law and guaranteed by the national legislation of Ukraine**<sup>3</sup>. The loss of control over part of the state's territory does not absolve the Ukrainian government of its obligations to respect and protect the rights of individuals on its territory/within its jurisdiction, including the right to property and to an effective remedy (restitution or compensation). There are several response measures that the Ukrainian authorities can implement to restore HLP rights of conflict-affected people, such as rebuilding and repairing destroyed and damaged property, provision of (alternative) housing, financial assistance and compensation. While the Ukrainian legislation on rebuilding and repairing destroyed or damaged property as a result of the conflict is clear and well-established and State authorities have been implementing it very early after the conflict started, further work is required to improve the compensation response mechanism and the note therefore focuses on compensation.
- Indeed, the introduction of a new procedure for the payment of financial compensation for people affected by emergencies constitute a positive development. Nevertheless, **further improvements are required to guarantee HLP rights of conflict-affected people**. This note outlines the current compensation system in place in Ukraine and highlights opportunities for improving its effectiveness in restoring HLP rights of conflict-affected people.

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### ●●●● THE COMPENSATION SYSTEM IN UKRAINE

- **The judicial procedure is the main avenue used in Ukraine for enforcement of HLP rights**, in particular compensation for damaged or destroyed property. As of October 2019, the humanitarian community in Ukraine has identified 152 civil cases<sup>4</sup> for compensation pending before domestic courts. Based on available information, none of the cases ruled has yet produced a successful enforced decision.
- The judicial practice on conflict-related compensation is not fixed, as the Supreme Court ordered to re-submit the case on the compensation for damaged commercial property for review of the first instance court. However, **claimants encounter several difficulties with regard to the court practice**:
  - Excessive length of proceedings;
  - Claimants' reluctance or inability (lack of procedure) to transfer a property title to the State<sup>5</sup>;
  - Burden of proof is on the applicant (circumstances/nature of damage/destruction and amount)<sup>6</sup>;
  - Erroneous grounds or legal qualification of the situation in which damage or destruction took place<sup>7</sup>;
  - Lack of dedicated state funding to implement positive decisions on compensation.

<sup>1</sup> 2019 [Humanitarian Needs Overview](#) p.10 and 35.

<sup>2</sup> According to Shelter Cluster, 639 new damages have been recorded as of November 2019, a similar trend as in 2018.

<sup>3</sup> [Constitution of Ukraine](#), Article 41, [Civil Code of Ukraine](#), Article 321, [Protocol No. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms](#), Article 1. See also [Universal Declaration of Human Rights](#), Article 17.

<sup>4</sup> NRC [report](#) 'Pursuing compensation for properties damaged or destroyed as a result of hostilities in the armed conflict in Eastern Ukraine: Gaps and opportunities', March-October 2018; subsequent review of cases pending before the courts (as of October 2019).

<sup>5</sup> This legislative requirement contradicts the [Pinheiro Principles](#) No.13 according to which States should not establish any preconditions for filing a restitution claim.

<sup>6</sup> [Civil Procedure Code of Ukraine](#) Article 81.

<sup>7</sup> With the introduction of the Anti-terrorist Operation (ATO) regime in Ukraine in 2014, the Law of Ukraine '[On combatting terrorism](#)' and its Article 19 on compensation for damages caused by terrorist act has been used as the legal framework governing compensation cases. Other frameworks have not been considered or have been applied by analogy, filling the gaps of the ATO regime.

- To mitigate these weaknesses and ensure effective remedy to people whose property has been damaged or destroyed as a result of the conflict, they **should have access to an effective non-judicial / administrative mechanism for compensation**. Although a procedure exists, it needs to be further developed and adapted to the circumstances of an armed conflict.
- Since 2015, Ukraine officially declared an emergency of social and military nature in Donetsk and Luhansk regions<sup>8</sup>, which led to the activation of **the Civil Protection System of Ukraine. This system entails an obligation of Ukraine to introduce compensatory measures** in cases of damage and destruction of housing. People who suffered material damage from hostilities, including damage and destruction to their housing, are entitled to:
  - Be recognized as persons affected by the emergency situation and
  - Receive social protection, in particular financial assistance, housing provision, or cash compensation.
- In July 2019, **a new procedure was introduced for the payment of financial assistance and compensation for people affected by emergencies**<sup>9</sup>. While this mechanism is not operational yet due to missing tools<sup>10</sup>, the Government is currently developing the necessary templates and regulations, with the support of the humanitarian community. The below limitations in particular are under the review of the Government:
  - Limited scope of application: the instrument in force only applies to individuals who refused evacuation or resettlement and stayed at the previous place of residence or within the same locality.
  - Threshold for compensation, currently set out at a maximum of UAH 300,000, should be carefully considered to be in line with the general approach established by the Code of Civil Protection and ensure adequate redress for lost, damaged or destroyed property as per international human rights standards.

## PROTECTION CONCERNS

- Humanitarian needs are complex and often are interlinked to each other. **The lack of compensation for the most vulnerable IDPs and conflict-affected people whose housing has been damaged or destroyed may undermine their ability to ensure an adequate standard of living**, including basic subsistence needs such as food, health expenses, coal and wood during winter. It therefore raises significant protection concerns. Indeed, many report having **depleted resources** because of the payment of a rent and/or of utilities for the property they cannot live in any longer and, in some cases, the payment of repairs for their damaged housing.
- It also constitutes an important protection issue as the **right to restoration of HLP rights is tightly linked to other rights** such as the right to an adequate standard of living, the right to family life and the right to privacy.
- The accessibility and effectiveness of a compensation mechanism in Ukraine could help some of these vulnerable individuals and families **overcoming the challenges they face to meet their basic needs and enhance their protection**. It also constitutes one of the pathways to sustainable housing solutions for IDPs.

## KEY MESSAGES

The humanitarian community in Ukraine is providing continuous technical support to the relevant authorities in Ukraine to develop the necessary tools and identify existing gaps and obstacles for individuals to have access to an effective remedy in cases where their property is damaged or destroyed as a result of hostilities. It recommends the following:

- **A comprehensive framework addressing the issue of restitution/compensation should be developed**. It could take the form of an umbrella law complemented by the necessary bylaws.
- The work currently carried on to **improve the administrative compensation mechanism** should be prioritized and completed by the Government. **Harmonized tools are necessary** for the administrative mechanism to be operational and to ensure full implementation of the existing legal regulation.
- The administrative mechanism **must be accessible to all affected individuals and provide fair and appropriate compensation**. Its design and functioning should allow for **a large number of claims to be processed**.
- Individuals whose property is located in areas outside the Ukrainian authorities' control should be able, at a minimum, to document their claims with the Ukrainian Government.
- **The Ukrainian Government should ensure sufficient sustainable state funding** through allocation of subventions to the oblast state administrations for the payment of compensation. In that perspective, the Government's decision to allocate funding for the payment of compensation in the 2020 State's budget is a positive development commended by the humanitarian community.

<sup>8</sup> Cabinet of Ministers of Ukraine [Regulation No. 47-p](#) 26 January 2015.

<sup>9</sup> CMU's [Resolution No. 623 of 10 July 2019](#) amending Resolution No. 947 of 18 December 2013.

<sup>10</sup> A damage assessment template, a form for the submission of compensation payments, a status of affected individual certificate and the Model Regulation to create regional Commissions for compensation and monetary assistance are being developed by the Ministry of Veterans Affairs, Temporarily Occupied Territories and Internally Displaced Persons of Ukraine.