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Policy Brief: October, 2022

## Rapid Needs Assessment: Protecting Property Rights during and after the War in Ukraine<sup>1</sup>

The full-scale war by the Russian Federation against Ukraine has already lasted for more than six months, and its toll is immense. Many thousands of civilians and tens of thousands of combatants have been killed. About 14 million Ukrainians have fled their homes and more than 1.2 million families have their homes damaged or destroyed. The losses to property include not only the physical destruction and damage of buildings and productive land plots, but also looting, forced evictions and contamination with explosives, as well as damage of critical infrastructure (water, electricity, heating supplies, roads, social service infrastructure). The security of property rights within the occupied territories and combat zones is also undermined by destruction and looting of government offices and archives, and loss of formal documents confirming the legitimate rights of the property holders. Moreover, many property holders have been displaced and a parallel property management system has been created by the occupying forces particularly in areas occupied since 2014.

As of June 2022, Ukraine's reconstruction and recovery needs toll is estimated at a minimum of \$349 billion (the World Bank, 2022<sup>2</sup>), including reconstruction of damaged housing (which constitutes about 40% of the total damage). Moreover, the immense scale of the damage requires increasing government capacity to process the volume of forthcoming cases for compensation of damages and restitution of rights. International and national support for this process will heavily depend on the government's ability to establish a **fast, transparent and just process of such compensation**. This ability would significantly affect the speed and scope of the post-war reconstruction process.

This needs assessment was conducted in July-September, 2022 based on the review of statistical and administrative reports, legal and normative acts, and interviews with key Government of Ukraine (GoU) authorities including the Ministry of Justice, State Geocadastre, the Ministry of Development of Communities and Territories, the Ministry of Infrastructure, and the Ministry of Agrarian Policy and Food. The results of this assessment were discussed with a broader range of stakeholders during a validation workshop on September 27, 2022.

In the subsequent six sections, this assessment:

1. Outlines the state of Ukraine's property rights infrastructure just before February's 2022 invasion;
2. Provides an overview of property-related damage caused by the invasion to date;
3. Outlines the GoU's response to date;
4. Reviews legislation for loss compensation and recommendations for its improvement;
5. Outlines the government needs for capacity building; and

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<sup>2</sup> The World Bank (2022). Ukraine. Rapid Damage and Needs Assessment. August 2022.

<https://documents1.worldbank.org/curated/en/099445209072239810/pdf/P17884304837910630b9c6040ac12428d5c.pdf>

6. Highlights the urgent needs of GoU and Ukrainians, in order to contain and repair the damage to real property.

## **1. Baseline analysis of the infrastructure for land and property rights and property management, prior to the invasion**

The process of compensation and restitution of property rights will depend on the pre-war conditions of the government infrastructure in this sector. After Ukraine's independence in 1991, the system of state registration of rights to real property was repeatedly reformed. Before 2013, the main confirmation of the rights to land plots were special title documents - state **deeds** for ownership of land plots, as well as **certificates** of ownership of real property (for buildings and apartments). Rights to housing units acquired during the Soviet era and the first years of Ukraine's independence are also confirmed by registration by special communal companies - **Bureaus of Technical Inventory (BTIs)**. After 2013, the official recognition and confirmation by the state regarding the origin, transfer or termination of rights to real property is carried out through entries in the electronic **State Registry of Rights for Real Estate (Registry of Rights)**. However, the registry is only about **40%** complete, and majority of property rights acquired before 2013 were not included in the registry. This share is much lower for the territories occupied since 2014.

Pre-2013 land ownership and rental data is stored in **the State Land Cadastre**. Scanned copies of all state acts on the ownership and rent of land plots registered before 2013 are included in this database. The completeness of the Land Cadastre is **71%** (42.7 million hectares).

However, the existing records in the registries are prone to errors. Information on approximately **200,000 land parcels is mismatched** between the Land Cadastre and the Registry of Rights. In addition, errors in the Land Cadastre arose from errors in the initial paper documents for the land parcels, including boundary overlaps, which leads to registration delays.

A number of institutions have been involved in management of land and real estate rights before and during the war. Among them are:

- i) **The Ministry of Justice** controls the state registration of rights to real property and its encumbrances. It also regulates and oversees the activities of notaries;
- ii) **The State Service of Ukraine for Geodesy, Cartography and Cadastre** (Geocadastre) implements state policy in the field of land relations and land management including the registration of land plots in the State Land Cadastre;
- iii) **The Ministry of Development of Communities and Territories** (Minregion) regulates the construction and maintenance of housing infrastructure. It also manages development of settlements and of Urban Cadasters for individual settlements and regions of Ukraine as well as regulating the activities of BTIs;
- iv) **The Ministry of Digital Transformation** is responsible for the implementation of electronic document management. The Ministry, through the **Diia application**, collects, processes and keeps records of information about damaged and destroyed real property as a result of hostilities, acts of terrorism, sabotage caused by the military aggression of the Russian Federation;
- v) **The Ministry of Infrastructure** estimates the cost of construction and reconstruction of infrastructure facilities. Together with the Ministry of Digital Transformation and Minregion - it launched the **Registry of Damaged and Destroyed Property**;
- vi) **The Ministry of Reintegration of the Temporarily Occupied Territories** is responsible for the reintegration of temporarily occupied territories and their population, including assurance of property rights of people in the occupied territories, internally displaced persons (IDPs) and refugees;
- vii) **The Ministry of Agrarian Policy and Food** coordinates the activities of the State Geocadastre and controls the use and protection of land of all categories and forms of ownership. In the wartime period, it is responsible for assessing the costs of land re-cultivation, the losses of owners (users) of agricultural land, and the costs of de-mining.

**Courts, notaries, valuers, surveyors** and several other public and private sector actors support the functioning of land and real estate markets and are involved in protection of property rights.

The capacity of government and private sector infrastructure to maintain the functionality of the land and real estate markets and to protect property rights can be represented by the number of market transactions in the pre-war period. Based on 2021 data, there were 200,000 land transactions and 570,000 real estate transactions per year, with **2.1 million successfully processed land transactions** at the peak in 2016. Out of these 2.1 million transactions, less than **250,000 were processed in the territories affected by the war**. The total number of court proceedings related to land and real estate was about 170,000 cases in 2020.

However, processing capacity is currently severely undermined by destruction and looting of local offices and displacement of staff. As a result, it is reasonable to expect that **the government capacity in this sector is reduced by about 20% nationally**, including almost complete lack of capacity in the occupied and de-occupied territories. This undermined system will have to handle the additional burden of processing millions of cases for compensation for damage and destruction of immobile property.

The problem of limited capacity will be exaggerated by cases where the owners or users of damaged property have lost documents that prove their property rights, and where no information is recorded in the Registry of Rights or found in the local archives.

## **2. Overview of damage and loss assessment estimates**

**Damage to residential and administrative buildings** are currently being estimated by the National Council for the Reconstruction of Ukraine, the World Bank and by the United Nations Satellite Centre (UNOSAT) team. Self-reporting by civilians has also been encouraged through the [Diia portal](#), via the Ministry of Digital Transformation and by the RebuildUA project.

Based on reports by the Local Military Administration, the estimated number of households whose residential real estate was destroyed or damaged as of September 1, 2022 already exceeds **1.2 million housing units**, affecting the rights of more than 3.0 million people. Donetsk, Luhansk, Kharkiv and Kyiv (region) are among the most damaged regions. **More than 85%** of all known damaged buildings are located in these regions. In these regions alone, more than 800,000 families are affected and will require compensation. In some of the cities and villages (e.g., Mariupol, Lysychansk), the level of damage is above 70% of all buildings.

**Damage to farmland** caused by mining and unexploded ordnance pollution or damage to topsoil (craters, fortification, tracks by heavy equipment) have been estimated using **indirect methods** by **the KSE Agrocentre** together with **the Ministry of Agrarian Policy and Food**. An alternative approach is remote sensing based on **satellite imaging** (however, no publicly available results are available).

More than **5 million land parcels** (13.5 million hectares) are at risk of mining and munition pollution, with estimated 1.3 million parcels that require re-cultivation as well as technical inspection before the land can be used safely.

## **3. Review of the current GoU response to the invasion, in the land and real estate sector**

Since the start of the war, the GoU has introduced several changes in legislation, procedures and infrastructure to enhance protection of property rights and to increase the resilience of property market infrastructure. These changes include:

- **Temporary closure** of access to the state registries and cadastres from February until mid-May, 2022 and continuing restrictions for occupied territories and within the combat zone;
- **Restrictions on the list of notaries** and registrars who have the right to carry out their duties, during the period of Martial Law;
- Establishment of a **loss reporting infrastructure** including:

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- A service for self-reporting of property damage and destruction via the online [state digital services platform Diia](#) (operational since the end of February, 2022);
- Administrative reports by [Local Military Administrations](#) based on the visual inspection of damaged buildings (since March, 2022);
- The [State Registry of Damaged and Destroyed Property](#) (since September, 2022).
- [Proposed law #7198 “On compensation for Damage and Destruction of Certain Categories of Real Estate as a Result of Military Actions, Terrorist Acts, Sabotage Caused by the Military Aggression of the Russian Federation”](#) was adopted by the Parliament of Ukraine in a first reading on April 1, 2022.

In summary, **property rights** in GoU-controlled territory have not been limited, except for the introduction of the possibility of requisitioning property for the needs of the Armed Forces of Ukraine (which is used mainly in regions where active hostilities are taking place). However, property rights in the occupied territories and within the combat zone are substantially impacted. The GoU has taken several steps to initiate a process for compensation of losses.

### 4. Legislation for loss compensation and recommendations for its improvement

The key component of property loss compensation and property rights restitution infrastructure is the proposed [Law #7198 \(Law on Compensation\)](#). It outlines the procedure for compensating residents whose property has been damaged or destroyed as a result of the war. To be accepted into the law, the proposal has to be adopted in the second reading and signed by the Parliament’s Speaker and the President of Ukraine. Currently, proposed amendments are being collected by the authors of the proposal.

The proposed law, however, has **significant limitations** in terms of scope and feasibility of the proposed approach. The key concerns include:

1. The law leaves it to the Cabinet of Ministers to develop the **procedure for issuing compensation**. However, the scale of losses is beyond the government’s immediate capacity to respond to, and would require making political choices on the key principals and priorities of the compensation process. This question of prioritization must be discussed openly and guided by law, including establishment of a more specific group of property right holders, property classes, categorization of affected communities and types of damages and respective approaches for compensation for each of such groups.
2. The proposal does not address loss and damage to several **large classes of property**: e.g. damage to productive land; property that belongs to legal entities (housing and productive assets, including irrigation infrastructure, commercial real estate). It also does not provide an opportunity for long-term renters and users of land, homes or other real estate to apply for compensation.
3. There is no procedure for **confirming eligibility for compensation** for a considerable share of affected population who lack formal property documents. The electronic Registry of Rights contains, on average, only about 40% of property right records (comprised mostly of those which were established after 2013). However, this proportion is much smaller for the occupied territories of Donbas and Crimea, as the registry was functional in these regions only from 2013 to 2014. Furthermore, **paper-based evidence of property rights is likely to be unavailable** for those whose houses are damaged or destroyed (sometimes with the documents inside), and property archives in the occupied territories have often been looted. The law must provide guidance about the types of evidence of legitimate property occupancy that can be considered in the absence of original titles, and a procedure for recognizing legitimate rights and awarding compensation, based on such evidence. Potential sources of evidence may include, but should not be limited to archived copies of public and private notaries, registration documents of building cooperatives, associations of building co-owners, registration records of the place of residence by territorial authorities, providers of utilities, testimonies of legitimate neighbors. Additional evidence may include composites of digital evidence such as e-commerce and delivery histories, geolocation histories and social media.

Similarly, the law should also guide in which cases the tenure established on the occupied territories since 2014 can be considered as legitimate.

5. The proposed **case-by-case procedure** for considering applications for compensation is not practical or feasible in areas with large-scale damage or destruction of property. Authorities will have to process a large number of claims (some with significant delays) relying on damaged or destroyed local government infrastructure. The proposed procedure is also vulnerable to corruption, which may trigger frustration and conflicts among the affected population. Instead, a classification of damages and mass processing of compensation can address this problem (e.g. considering all the right holders of a destroyed multi-apartment building as a single case or considering all land parcels cultivated by a single farm). Fortunately, Ukraine has successful experience with mass processing with the registration of privatized land and with the registration of rental rights for agricultural land, which can be useful when establishing a mass compensation processing.

6. The court-based system of **dispute resolution** for cases outside the stipulated procedure will not be able to process a potentially very large number of cases, resulting in the same set of problems as mentioned above. An explicit guidance for treating cases with insufficient formal evidence of rights and the stipulation of an out-of-court dispute resolution system may reduce the load on the court system and speed up the resolution of majority of disputed cases.

7. The law should include procedures for **reimbursing** property owners or users the cost of repair made out of pocket, or for local businesses, local governments and other actors subsidized individuals for such repair. In all cases, the rights for claiming compensation should be transferred to those who cover the cost up to the level when the state demands reparations from the aggressor country.

## **5. Recommendations and government needs for capacity building**

Successful implementation of the Law on Compensation will depend on the government's **implementation capacity** and steps taken in preparation for implementation. Interviews with relevant government authorities conducted in August, 2022 revealed the following needs for building up such capacity:

1. Designing and governing a transparent and corruption-proof **system for securing and managing funds** for reconstruction and development that are collected via the expropriation of assets of the Russian Federation and individuals responsible for Russian aggression in Ukraine and internationally; reparations; international aid and other funding sources.
2. Adopting **legislation** that stipulates clear and just principals for distribution of compensation including:
  - a. Adoption of the Law Proposal #7198 addressing the above mentioned points;
  - b. Implementation of key reforms in the land and housing sector started before the full-scale invasion (anti-corruption, land management decentralization, European integration, etc);
  - c. Establishing the authority of local government over the re-construction and management of land and housing property in cases when the legitimate right holder cannot be identified.
  - d. Integrating the process of compensation and restitution with a broader reconstruction plan for the war affected areas, including the reconstruction of public infrastructure.
3. Upgrading the **government's technical capacity** in the area of governance and protection of property rights, including:
  - a. Digitizing all archives of the local BTI to make them suitable for electronic processing and backup;
  - b. Facilitating interoperability of all key government registries, cadasters and services including the Registry of Damages, Urban Cadasters, Registry of Rights, Land Cadaster, and Diia;
  - c. Facilitating the design of community redevelopment plans for significantly damaged urban settlements (such as Mariupol, Severodonetsk, Popasna) in partnership with international donors and leading international experts;

- d. Establishing the legal basis, national framework and local electronic Urban Cadasters for all urban areas;
- e. Securing access to high-resolution satellite imagery for recording of destruction and damage to land and infrastructure for the entire period of the war in all affected territories;
- f. Developing a methodology and normative base for recording, assessing and implementing re-cultivation projects for war-damaged agricultural land;
- g. Establishment of online personal working spaces (offices) for land surveyors, which would simplify the provision of services on the de-occupied territories;
- h. Updating the topography base map to facilitate the reconstruction and community development process;
- i. Implementing a public awareness and legal support campaign regarding reporting loss and damage of property and voluntary recording of property rights before 2013, including on the occupied territory. The information campaign should be supplemented with establishment of feedback and support infrastructure for those filing the request for compensation.

## **6. Urgent needs of Ukrainian people and government for housing reconstruction and protection of property rights**

**Urgent needs** of the Ukrainian people and government in the area of loss compensation and property right protection require special attention. Such needs include:

- a. Mobilizing international aid and the supply of critical **construction materials** (e.g. window glass, roofing material, doors, individual heating units) before the start of the winter season 2022, for at least 33,000 housing buildings;
- b. Supporting **de-mining** of land and infrastructure (approximately 1.7 mln hectares);
- c. **Rebuilding and re-equipping local offices of key government services** such as centers for administrative services, courts, offices of the State Cadaster and local government authorities. Establishing capacity for providing **mobile government services** (including registrars and notaries) for citizens living outside district and regional centers;
- d. Developing a normative base and **upgrading Diia** service for recording the losses to allow uploading of proofs of legitimate rights to the damaged property as well as for the voluntary recording in the Registry of Rights of property registered before 2013;
- e. Upgrading **server and data storage capacities** to store digital copies of documents and backups for key government services (Geocadastre, Ministry of Justice, Ministry for Communities and Territories Development, Ministry of Digital Transformation).

The above and several other complementary activities presented in this report will help to re-build and upgrade Ukrainian real estate and land markets in a reasonable timeframe and prevent undue stress and tension in all sectors of Ukrainian civil society.