



Approved on 20 March, 2018

Housing Land and Property (HLP TWG) Strategy for 2018

COUNTRY CONTEXT: UKRAINE	2
SCOPE AND LIMITATIONS OF HLP TWG STRATEGY	2
PART I APPROACHES	3
1.1 HLP-RELATED CHALLENGES	4
1.2 WHAT THIS HLP STRATEGY OFFERS	4
PART II HLP TWG ACTION PLAN 2018	5
Annex 1	7

COUNTRY CONTEXT: UKRAINE

Three years of continuous conflict in eastern Ukraine have resulted in over 40,000 homes suffering some form of damage. Also, Approximately 25 per cent of IDPs in the GCA have inadequate shelter, placing them at risk of further involuntary displacement. Damage to houses is reported daily, increasing the need for acute shelter interventions, and adding to the backlog of more durable repairs, mainly light and medium. Since the beginning of military activity in Donbas, the region suffered over \$463.6 million losses according to the response to an official inquiry as to the damaged and destroyed objects and overall losses to the military-civilian administrations of Donetsk and Luhansk regions. In Luhansk region, as of 01 October, 2017, 7,672 objects were damaged. The overall losses amount to \$320 million. Housing in Donetsk region suffered significant damage too. As of 01 December, 2017, 7,402 objects were considered ruined or damaged, and the losses were estimated at \$142.6 million¹. It should be noted, that all the information in this regard is being obtained by inquires with no public outreach on the matter by the Government.

On 15 November, 2017 the Government approved “Strategy of integration of internally displaced people and implementation of durable solutions regarding the internal displacement till 2020”², 13 December, 2017 – the State Targeted Program of Resilience and Peace-building in Eastern Regions of Ukraine³. At the same time, there is an absence of longer-term rehabilitation programmes⁴.

In 2017 the Housing, Land and Property Technical Working Group (HLP TWG) prioritised in its activities the issues of restitution/compensation, counter-actions to occupation of civilian property by militaries and housing solutions for conflict-affected population. Operations and actions within the defined priorities prompted for the elaboration of the comprehensive HLP strategy, to be undertaken by HLP TWG solely and in cooperation with other international and national governmental and non-governmental stakeholders.

The protection of HLP rights requires three different approaches, depending on geographical areas: GCA, vicinity of the contact line, temporary occupied territories. The shrinking humanitarian access to temporary occupied territories and to the contact line leaves most of the protection concerns of the emergency phase in place, ie. risk of looting housing, land and other property. People who found their property destroyed, damaged or looted, have little chance to search for legal remedies out of support by international donors and their implementing agencies. Up to date, the judicial remedies, if accessible at all, did not prove their efficiency to conflict-affected people who attempted to search for judicial protection of the HLP rights. Likewise cases will most probably search for the international judicial protection of violated HLP rights in the absence of national legislation in Ukraine and absence of proper implementation of judgements by Ukrainian courts.

Meanwhile, the lack of adapting the Ukrainian legislation to conflict and displacement phenomena puts doubts on the perspectives of resilience for conflict-affected communities all over Ukraine. Housing solutions are the most pressing issues in this respect, where the specific focus of the humanitarian community goes to most vulnerable categories of conflict-affected populations (CAPs). Therefore, technical legal support of social housing issues and actions in relation to legal resolution of conflicts around collective centres are in the focus of HLP TWG.

¹ <https://112.international/conflict-in-eastern-ukraine/over-4636-million-worth-of-damage-to-donbas-since-beginning-of-war-24445.html>

² <http://zakon0.rada.gov.ua/laws/show/909-2017-%D1%80>

³ <http://zakon2.rada.gov.ua/laws/show/1071-2017-%D0%BF>

⁴ https://www.humanitarianresponse.info/system/files/documents/files/ukraine_humanitarian_response_plan_2018_en_20171201.pdf

SCOPE AND LIMITATIONS OF HLP TWG STRATEGY

HLP TWG facilitates efficient coordination of specialist HLP interventions, as well as ensures that other sectors of humanitarian and recovery assistance listed in the HCT's strategic development incorporate HLP issues. Therefore, the HLP TWG's strategic goal is to enhance responses at country level, that given the complexity and controversial character of Ukrainian legislation implies the proper coordination and cooperation among governmental, local and non-governmental stakeholders. The HLP TWG works according to its Terms of reference enforced in 2015⁵.

Obviously, the HLP TWG should develop its activities according to the current phase of humanitarian response. Together with acute emergency concerns, the main scope of activities have been gradually shifting towards early recovery and first development steps in 2016-2017, thus having developed grounds for the prioritising the HLP issues at national and local levels. Simultaneously, the HLP TWG should be supported in strengthening its capacity to provide technical expertise by main humanitarian and development actors. The coordination capacity of the HLP TWG in 2018 should rise by increasing the number of dedicated staff by leading HLP TWG partner organisations.

Priorities for the protection of HLP rights to feed into higher-level processes, such as the proposed HLP structure described above. Availing a small amount for ad hoc working sessions with other HLP actors would also be useful.

This document is prepared by the HLP TWG as part of HRP of Protection and Shelter Clusters⁶. The HLP TWG Strategy is meant to address challenges in partners' programming that arise out of internal and external challenges, that prevent conflict-affected people from enjoyment of their housing, land and property rights. It is a subject to adapting to global HLP AoR Strategy after it is adopted. Neglecting their duties by executives at regional and local levels, gaps in legislation and/or lack of implementing legislation, lack of access to judicial remedies in place end up in depriving people of their rights, that is why the national regulatory mechanisms are under close monitoring by the Group.

Strengthening the humanitarian-development nexus in legalistic sphere is a necessary precondition for the resilient development of conflict-affected communities.

Key drivers for an HLP strategy are:

- *to overcome regulatory barriers to emergency and early recovery humanitarian programming;*
- *to promote access to HLP rights in conflict-affected areas by means of individual legal support.*

Encouraging the decision-makers at central, regional and local levels to facilitate the regulations, so that to ensure the protection of HLP rights affected by conflict in eastern Ukraine.

Far reaching goal of HLP TWG strategy is to achieve the comprehensive governmental policy in the HLP sphere. Not achievable for 2018, it is nevertheless has to be settled.

When the goals and objectives of the Strategy are achieved, the scope of responsibilities is gradually transferred to national, regional and global development actors driven by intergovernmental organisations, ie as indicated in p.12 of PACE Resolution 1708 (2010) "Solving property issues of refugees and internally displaced persons"⁷.

PART I APPROACHES

⁵ https://www.humanitarianresponse.info/system/files/documents/files/eng_tor_hlpgw_-_24_july_2015.pdf

⁶ HLP issues are mentioned in chapter "Protection" (page 25) of the HRP 2018

⁷ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17814&lang=EN>

1.1 HLP-RELATED CHALLENGES

HLP-related challenges may be listed as follows:

- Difficulty in access to HLP needs in vicinity of **the contact line and TOT**
- General **overlooking of HLP issues by governmental decision-makers**
- Difficulty in **accessing documents** required to prove tenure
- **Tenure insecurity** that either excludes other affected people from receiving shelter assistance or exposure to risk of eviction after receiving assistance
- **Limited / targeted coverage** of shelter beneficiaries based on tenure, which leads to inequitable provision of shelter assistance, particularly in more remote and vulnerable areas.

HLP rights aren't within traditional focus of humanitarian response only. The complicated nature of HLP rights requires the additional efforts from agencies dealing with protection. In Ukrainian realities the following particular issues were discovered:

1. *Limitations in (re)-obtaining title documentation for real estate and/or land*, that prevent beneficiaries from getting assistance from shelter programmes for constructual repairs and new houses.
2. *Exclusion of large numbers of affected people from protection*. Formal legalistic approach in protecting HLP rights in the situation when state policy targets IDPs only together with gaps in legislation leads to time and means consuming ways for protection (ie. compensation through ECtHR after domestic judicial remedies are exhausted), which leaves the most vulnerable out of protection.
3. *Protracted conflict as the additional risk*. Protection of HLP rights of civilians, affected by deeds of military staff constitute the continuous challenge for IHL and puts potential risk to security of beneficiaries. That particularly counterweights legal protection with physical security of people.
4. *Gap in housing policy*. Non-efficient housing policy isn't applicable in modern circumstances in general and put breaks to affordable housing solutions to conflict-affected populations in particular.

These theses form the basis of this HLP Strategy. These are just minimum actions depending on needs.

1.2 WHAT THIS HLP STRATEGY OFFERS

The HLP Strategy offers a practical, right-based approach procedures that partners can incorporate into their legal, protection and shelter programming. HLP regulatory barriers are harder to overcome in the situation where the comprehensive policy to address CAPs needs is absent and the legislation is controversial together with judicial remedy in HLP issues inaccessible because of high fees.

To address the abovementioned challenges, this document recommends the following actions that can be undertaken by HLP TWG and its partners:

- *Internal HLP Actions* – preparedness mechanisms internal for HLP TWG partners.
- *External HLP Actions* – advocacy for the improvement of HLP rights protection and settlement of public policies and ensuring better implementation. Some examples of external HLP actions are: working with

governmental and other stakeholders on formulating and implementing fair and comprehensive policies of restitution/compensation, civilian protection during the conflict, housing programmes for CAPs.

PART II HLP TWG Action Plan 2018

HLP TWG agreed to provide conditional division of HLP issues into three big groups: GCA issues, contact line issues and TOT issues. Most common issues in the HLP sphere are listed in Annex 1 to this Strategy.

As its advocacy priorities in 2018 the HLP TWG decided to keep on with achieving tangible results at the national level with issues of restitution/compensation, counter-actions to occupation of civilian property by militaries and housing solutions for conflict-affected populations.

Long with that, the HLP TWG will prioritise protection of **property rights in TOT** as the necessary precondition for restitution, data collection on possibilities of **agricultural land to return**, as well as legal issues of **rental market** development.

HLP TWG will increase its internal capacity building, so that to ensure constant and strong involvement of relevant organisations and government entities. This approach will allow to strengthen advocacy and lobbying efforts at local, regional, national and international levels.

Issue	Joint action	Desired outcomes	Activities	HLP TWG partner organisations involved
<i>Restitution/compensation rights</i>	<ul style="list-style-type: none"> -Advocacy in respect to legislative amendments to ensure property restitution/compensation mechanism -Advocating for instituting the Registry of damaged/destroyed housing -Initiate establishment of the reporting mechanism from local to central authorities on search and implementation of housing solutions for IDPs, especially for those residing in collective centers 	Government of Ukraine starts legislative elaborations on efficient restitution /compensation mechanisms with mass claims commissions included	Maintain dialogue and ensure advocacy with relevant bodies of state power (Ministry of TOT and IDPs, Ministry of Social Policy, Ministry of Justice, Ministry of Regional Development) to promote this idea in order to be incorporated in the existing legal instruments and/or for the new legal instruments to be developed	NRC-leading DRC R2P UNHCR OHCHR
<i>Right to be protected from to occupation of private property of civilians by militaries / arbitrary deprival of property</i>	<ul style="list-style-type: none"> -Advocacy in respect to international law with the focus on protection of civilians and their property during the conflict -Advocating for housing conditions assessment along the contact line -Initiate establishment of the reporting mechanism from local to central authorities on search and implementation of housing solutions for IDPs, especially for those residing in collective centres - Trainings/events 	Military units take into consideration the international humanitarian law when deploying in the vicinity of the contact line	<ul style="list-style-type: none"> -Maintain dialogue and ensure advocacy with relevant bodies of state power (Ministry of Defense and ATO headquarters) to ensure adherence to the standards of human rights law and international humanitarian law. -Assistance to SBU, MoD, State Border Guard, National Guard in development of internal guidelines for military when occupying civilian property and informing the population about the conduct of military operations on the legal grounds 	OHCHR UNHCR OSCE SMM R2P CIVIC
<i>Right to Affordable Housing</i>	<ul style="list-style-type: none"> -Advocating for housing needs assessment in GCA and along the contact line -Initiate establishment of the reporting mechanism from local to central authorities on search and 	Government undertakes the elaboration of housing programmes for vulnerable categories of displaced and conflict-affected populations	-Maintain dialogue and ensure advocacy with relevant bodies of state power (Ministry of Regional Development, MToT)	UNHCR - leading DRC NRC R2P

Issue	Joint action	Desired outcomes	Activities	HLP TWG partner organisations involved
<i>Protection of property rights in TOT</i>	implementation of housing solutions for IDPs, especially for those residing in collective centres			
	-Monitoring of the situation with protection of property rights in TOT with the view on opportunities for restitution -Monitoring of the judicial practice in TOT-located property cases	-A number of cases of shift of tenure is reported -Ukrainian government starts elaboration of strategies towards protection of property rights of people residing in TOT	To report on regular (triannual) basis on the situation with property rights in TOT (briefs)	ICRC OHCHR (conditionally) NRC (conditionally)
<i>Data on land rights</i>	-Database of land tenure records in conflict-affected areas -Monitoring of the judicial practice in protection of land rights cases	Launching of the land tenure rights database To lead the judicial practice in HLP-related issues to the internationally-recognised standards	To provide the regular update on the HLP-related cases To analyse court practice, to conduct educational events	Crimean Diaspora - leading
<i>Integration to host communities/prevention of forced evictions / collective centers' issues</i>	Provide technical support to the development of any survey/assessment tools with special focus on issues of housing solutions and prevention of forced evictions	To ensure that bigger number of CAPs are ensured their housing rights and safe tenure.	To share the international experience of housing solutions and prevention of the forced evictions from the collective centres and/or other tenure securing mechanisms	SSS - leading UNHCR
<i>Internal capacity building</i>	-Ensure that HLP issues and related rights are systematically addressed through all stages of emergency response and the transition to early recovery and reconstruction -Prevent that HLP issues disappear from the agenda of the central and local governments	-Raising the number and quality of HLP advocacy outputs - Get the demand for HLP expert support from governmental bodies	-employment of more staff - thematic workshops (3 in total) -produce advocacy tools and events solely or jointly, to support media relations	NRC – leading R2P
<i>Capacity building of national authorities and civil society</i>	<i>Ensure that legal capacities of the local stakeholders are sufficient</i>	-Governmental authorities and local NGOs have sufficient understanding of HLP issues to develop their own HLP strategy -Ensure timely awareness raising among relevant stakeholders and development of relevant legal mechanisms	-To provide trainings and round tables on acute HLP issues on a regular basis (2 per Donetsk and Lugansk regions) - Perform field visits to the affected areas, local consultations and interviews with key informants to assess type and scale of HLP issues and to identify relevant institutions and their capacities to address these issues (two surveys in 2018)	NRC – leading with hand over to development actors DRC UNHCR OHCHR R2P NGO "Stabilization and Development"
<i>Ensuring the governmental stakeholders involved in meetings and other activities of HLP TWG</i>	Provide technical support and advice to national and international stakeholders regarding HLP issues and related rights	To ensure that international standards are adhered to upon the development of the HLP-related regulatory acts	To provide expert support to governmental and other stakeholders per request. To participate in the working groups and/or meetings dedicated to the HLP –related issues at the central and local levels.	NRC-leading DRC R2P UNHCR (conditionally)

Cross-cutting HLP Issues

1. Absence of restitution and compensation mechanisms for people which have their house damaged or destroyed.
2. Lack of remedy mechanisms and no legislation to implement international law instruments.

GCA HLP Issues

The general GCA HLP issues include the following:

1. Incoherent legal and policy framework regarding status of conflict-affected individuals (children, veterans).
2. Lack of adequate housing for IDPs in GCA .
3. Security of tenure issues for IDPs in rented accommodation and threat of forced evictions for most vulnerable categories.
4. Lack of specific rental market regulation focused on IDP needs
5. Residence in the collective centres, which quite often do not have contractual (renting) relations as a ground.
6. Lack of land plot cadaster number for land plots privatised prior to establishing the State Land Cadaster system.
7. Inefficient judicial remedy caused by gaps in Ukrainian legislation
8. Prescription period, statutes of limitations.
9. Lack of implementing laws, which prevents from implementation of Ukraine's obligations under HLP international law instruments.

Contact line issues:

1. Military occupation of civilian property.
2. Poor cadaster data for plots of land as the risk of no or unfair restitution.
3. High land privatisation fees and hurdles in procedure under rule of Military and Civil Administration.
4. Absence of Military and Civil administrations in some settlements, which at all leaves residents unprotected.
5. Absence of ad hoc mechanism to address (re)obtaining of title documents for real estate (waiver of administrative payments).
6. Absence of restitution and compensation mechanisms for people which have their houses damaged or destroyed.
7. Problems with inheritance of severely damaged or destroyed housing.
8. Resubordinated communities and abandoned archives of immovable property.
9. Contradictory legal and policy framework regarding status of conflict-affected individuals.
10. Utility payments for housing with no or restricted access.

TOT HLP issues:

1. Problems with protection of property rights as the precondition for restitution.
2. Problems with registration of real estate transactions and inheritance procedure in TOT.
3. Duplicates of immovable registers data.
4. "Frozen" mortgages for TOT-located real estate.
5. Possibility of losing one's immovable property in TOT.

6. Inability to inherit property in TOT if the application for the inheritance was served in TOT before start of the conflict.
7. Inability to register the place of one's residence in TOT.
8. Problems with buying or purchasing housing located in TOT without a certificate of a family's composition.
9. Utility payments for housing with no or restricted access.