

# **INTERNATIONAL EXPERIENCE AND NATIONAL MECHANISMS**

OF REPARATION FOR VICTIMS  
OF THE CONFLICT IN UKRAINE



Kyiv 2019

**International experience and national mechanisms of reparation for victims of the conflict in Ukraine** // Kyiv, 2019 – 18 p.

Author: **Oleg Martynenko**, Doctor of Law, Professor  
Design and layout: **Vyacheslav Bodnar**

This review was prepared by the Ukrainian Helsinki Human Rights Union as part of the CivilM+ platform.



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## SUMMARY

**This review** presents an information on the amount of damage caused to the civilian population as a result of the armed conflict in the east of Ukraine, analyzes international norms and practices for reparations, and also provides recommendations to the government and parliament of Ukraine to bring national legislation in line with international standards. Information used in the review provided by UHHRU, international and non-governmental organizations working in the field of protection of victims of conflict: Right for Protection Charitable Foundation, Donbass SOS NGO, UNHCR, Sub-Working Group on Housing Issues, Restitution and Compensation for Loss of Property of the Inter-Agency Working Group on the Improvement of National Legislation on the Protection of the Human Rights of Internally Displaced Persons established under the Ministry for Temporarily Occupied Territories and Internally Displaced Persons of Ukraine, the Council of Europe Project “Strengthening the Human Rights Protection of Internally Displaced Persons in Ukraine”, implemented within the framework of the Council of Europe Action Plan for Ukraine 2015-2017.

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## AMOUNT OF LOSSES

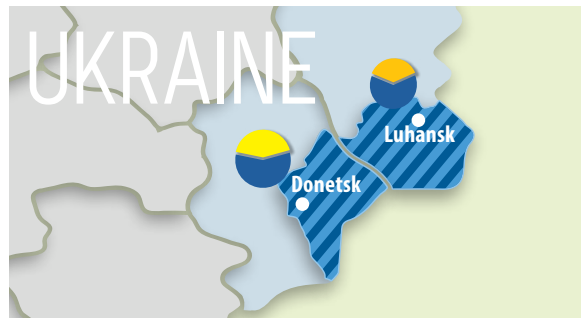
The armed conflict in Donbass has caused losses of the widest range: human, material and economic losses, physical and mental traumas, nervous breakdowns.

During the entire period of the conflict (2014-2019), OHCHR recorded 3,023 civilian deaths (1,794 men, 1,046 women, 97 boys, 49 girls and 37 adults whose gender is unknown) and more than 7,000 injuries. At the same time, there are

about 9,5 thousand dead and 21-24 thousand injured among the combatants.<sup>1</sup> 4,734 soldiers of the Armed Forces of Ukraine have been recognized as disabled persons, the total number of civilians who have acquired disability as a result of the armed conflict is unknown.<sup>2</sup> According to the Ukrainian side, the prevalence of post-traumatic stress disorder is estimated to occur among 60-70 thousand combatants and 512 thousand IDPs.<sup>3</sup>

The destruction of objects of energy, transport, industrial and social infrastructure in the course of the armed conflict in Donbass has caused losses amounting to approximately USD 50 billion.<sup>4</sup>

As of beginning of 2019, more than 50 thousand civilian buildings damaged during the hostilities have been recorded on both sides of the contact line. Of these, the houses of about 40 thousand families urgently need repair. The following are located in the territory controlled by the government<sup>5</sup>:



	Donetsk region	Luhansk region
Damaged housing units	<b>12 921</b>	<b>7 433</b>
those, among them, requiring renovation	<b>5 822</b>	<b>3 019</b>

<sup>1</sup> Office of the United Nations High Commissioner for Human Rights. Report on the human rights situation in Ukraine 16 November 2018 to 15 February 2019, [https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019\\_Ukrainian.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019_Ukrainian.pdf)

<sup>2</sup> Reparation for victims of the conflict. Does the government offer anything apart from recognizing disability and a pair of crutches? / V. Moysa, edited by: O. Pavlichenko, O. Martynenko / Ukrainian Helsinki Human Rights Union. — K., 2018. — 64 p., <https://helsinki.org.ua/wp-content/uploads/2018/12/Reabilitatsiya-zhertv-vijny.pdf>

<sup>3</sup> <https://www.international-alert.org/fr/news/ukraine-y-32-pereselenciv-posttraumatichnij-stresovij-rozlad>

<sup>4</sup> <https://www.radiosvoboda.org/a/news/28595287.html>

<sup>5</sup> The materials of Donbass SOS NGO, presented at the roundtable «Destroyed civilian housing: an agenda for the fifth year of the conflict», Secretariat of the Ukrainian Parliament Commissioner for Human Rights, March 20, 2019, Kyiv

## LEGAL BASIS FOR REPARATION

The issue of providing victims of conflict with the necessary assistance in the form of restitution, compensation, rehabilitation and satisfaction is a separate subject of international legal instruments. In particular, the latter foresee:

- ✓ assistance of the authorities in the return of IDPs, to the extent possible, of their property and possessions, that they left behind or that had been withdrawn after their displacement. When recovery of such property and possessions is not possible, these persons should be assisted by the competent authorities in obtaining appropriate compensation or another form of just reparation ([UN Guiding Principles on the Movement of Persons within the State](#), 1998, Principle 29(2);
- ✓ responsibility of the state for establishing and support of equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims; obligation of the state to create national multi-purpose cadastral or other appropriate systems for the registration of rights for housing, land and property, and to ensure that existing registration systems are not destroyed during the conflict or post-conflict period ([the UN Principles on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons](#), the so-called Pinheiro Principles, 2005);

- ✓ ensuring by the state of the full, effective and immediate reparation proportional to the gravity of the loss of a victim (the UN Resolution A/RES/60/147, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), 2006);
- ✓ securing the possibility of restitution or compensation for IDPs in case of expropriation of property and possessions ([Recommendation \(2006\)6 of the Committee of Ministers of the Council of Europe to member states on internally displaced persons](#), 2006, p.8.);
- ✓ obligation of the state to ensure timely and effective compensation for the loss of access and rights for housing, land and property through restitution and compensation. This includes: compensation for non-pecuniary damage (for example, psychological suffering) related to the circumstances in which displacement and dispossession occurred; compensation for loss of income and additional costs as a result of lack of access to immovable property or abandoned properties; compensation for wrongful destruction or damage to immovable property or loss of significant moveable property attributable to acts or omissions on the part of the authorities in whose jurisdiction the property is located (PACE Resolution 1708(2010) [on solving property issues of refugees and internally displaced persons](#), 2010).

### THESE PROVISIONS

are also embodied in jurisprudence of ECHR in cases of *Dogan and others v. Turkey*, *Saghinadze and others v. Georgia*, *Gulmammadova v. Azerbaijan*, *Radanovic v. Croatia*, *Xenides-Arestis v. Turkey*.

## INTERNATIONAL EXPERIENCE OF REPARATION FOR VICTIMS OF CONFLICT<sup>6</sup>

**Indonesia** decided to provide agricultural land and the necessary means to facilitate the reintegration of former combatants into society, to compensate political prisoners and civilians affected. The government guarantees that citizens who have suffered from the conflict will also be employed, and in case of disability – appropriate payments within the social security system will be made.

**Colombia's** Victims Law (2011) also introduced a procedure for the restitution of land for victims of conflict, that should be implemented by new state agencies – the Victims Support Agency and the Land Restitution Agency.

**Sudan** has set up the Darfur Rehabilitation and Resettlement Commission, that was supposed to develop simple, accessible, transparent and realistic procedures for reparation. The implementation of the procedures is reserved to an independent Commission on reviewing claims of residents of Darfur for compensation for damage from the conflict. The list of damages includes physical and mental traumas, nervous breakdowns, human and economic losses.

The Government of the **Republic of the Philippines** decided to allocate at least 8 billion Philippine Peso (\$ 150 million), as well as proceeds of sale of assets illegally acquired by Marcos (\$ 684 million) to be deposited in US dollars. From this amount, the government pledged to compensate victims of violations of human rights

<sup>6</sup> Using the materials of «Foreign experience in providing housing for internally displaced persons and compensation for damaged/ destroyed housing» // Technical Working Group on Housing, Land and Property, Shelter Cluster Ukraine, with the support of the Council of Europe Project «Strengthening the Human Rights Protection of Internally Displaced Persons in Ukraine», 2017



committed during the martial law. Priority is given to claimants who have won human rights lawsuits against Marcos. This category of claimants is guaranteed to be paid promptly and in full.

After the armed conflict, Georgia adopted a law on the restitution and compensation of property in the territory of **Georgia** to the victims of the conflict in the former South Ossetia region (2006). According to this law, IDPs became eligible for restitution of the property left behind in the occupied territories. Moreover, this right is inherited. The government of Georgia has developed a housing program for IDPs, that included the possibility for IDPs of privatization of housing units in which they lived for a long time; resettlement of IDPs into renovated or newly built houses or provision of lump sum compensation in the amount of 10 thousand US dollars; the possibility of acquisition of housing in rural areas; repurchase by the state of private property and transfer thereof to the ownership of IDPs.

**Azerbaijan** - according to the state Program for Improvement of Living Standards and Generation of Employment for Refugees and IDPs, 82 temporary settlements were built with social and technological infrastructure utilized by 180,000 forcibly displaced persons (25.7% of the total amount).

**Moldova** - the government's decision secured the amount of compensation for persons who suffered as a result of the

armed conflict: for damaged buildings - within the limits of actual damage excluding expenses for construction materials provided to citizens by local authorities free of charge; for household items - within the claimed loss, but not more than 500 non-taxable minimum incomes of citizens (per family); for vehicles - in accordance with the established amount of loss within the limits of 400 thousand rubles. Compensation was allocated at the expense of the state insurance company, even if the property was not insured.

The government of **Croatia** has allocated assistance to each victim at a rate of 35 sq. m. per owner of the house and 10 sq. m. per member of a family along with a centralized restoration of all life support systems of the civilian population.

**Bosnia and Herzegovina** - within the framework of the Alternative Housing Program, housing was provided in various state-owned properties - vacant hotels, tourist centers, temporary accommodation centers, houses reconstructed by the state or through international assistance. As a separate approach, the following was also put in place: rent of private premises by the housing authorities; provision of land plots and construction materials; commissioning of new residential buildings.

## NATIONAL MECHANISMS OF REPARATION FOR VICTIMS OF THE CONFLICT

**The Law of Ukraine on the Protection of Rights and Freedoms of Internally Displaced Persons** (2014) was adopted to resolve housing problems of the IDPs. It set out that local state administrations and bodies of local self-government, within the limits of the authority conferred on them, should ensure the provision to IDPs of social housing or residential accommodation from the housing fund for temporary residence. However, the law does not provide for any simplified legal mechanisms for IDPs to obtain social housing or residential premises from the housing fund for temporary residence.

**The Civil Protection Code of Ukraine** (Article 86) grants IDPs the right for compensation for damaged/destroyed housing under certain conditions, but at the same time there is no mechanism for allocating such funds in the State Budget of Ukraine. The existence of this legal barrier, combined with ineffectiveness of the judicial system, does not allow most victims of the conflict to claim damages through formal procedures. As a result, around 4,000 individual complaints have been filed to ECHR regarding the violation of property rights of the civilian population.

**The Law of Ukraine on Rehabilitation of Disabled Persons in Ukraine** was supplemented in 2017 by 16 categories of persons who could require rehabilitation services - servicemen, reservists of the Armed Forces of Ukraine and military formations, law enforcement personnel, the Foreign Intelligence Service of Ukraine, etc., who were directly involved in the Anti-terrorist operation, being located

directly in the areas of its conduct.

Authorities have developed several legislative initiatives on compensatory mechanisms for victims of the conflict, the main of which are the following:

- ✔ the draft law No. 6472 dated May 18, 2017 **on the Provision of Housing Assistance to Citizens of Ukraine whose Housing has been Destroyed (Destructed) or Damaged as a Result of Armed Aggression by the Aggressor State.**

The draft law proposes: to determine the amount and order of payment of housing aid; to make payments to the population in the form of housing assistance, to partially cover the cost of construction and purchase of housing instead of the destroyed one, major maintenance of damaged housing; to determine the receipt of housing assistance provided that the citizens of Ukraine do not have in their ownership another suitable housing for living upon applying to the competent authorities in order to receive such assistance.

- ✔ draft law No. 2167 of February 18, 2015 on amendments to the Law of Ukraine **on the Protection of Rights and Freedoms of Internally Displaced Persons (regarding compensation of the value of damaged property)**

The draft law proposes: to foresee the right of IDP, in the event of damage to property that was left behind by the person on the territory of the administrative territorial unit from which the internal displacement was realized, for reparation and compensation of the value of such property in accordance with the legislation of Ukraine.

The Working Group and the Coordination Council of the Ombudsman's Office, jointly with UHHRU, developed a draft law [on the Principles of the State Policy for Protection of Human Rights in the Context of Addressing the Consequences of the Armed Conflict](#) (not registered). The draft law proposes: to implement a wide range of protection of victims of conflict through systematic and gradual introduction of transitional justice mechanisms in the activities of central and local authorities.

Sub-Working Group on Housing Issues, Restitution and Compensation for Loss of Property of the Inter-Agency Working Group on the Improvement of National Legislation on the Protection of the Human Rights of Internally Displaced Persons established under the Ministry for Temporarily Occupied Territories and Internally Displaced Persons of Ukraine (2016-2017) with the technical assistance of the Council of Europe Project "Strengthening the Human Rights Protection of Internally Displaced Persons in Ukraine", implemented within the framework of the Council of Europe Action Plan for Ukraine 2015-2017, have developed main provisions of these three draft laws:

[«On the Restitution of Property and Reparation to Internally Displaced Persons, Refugees and Other Victims»](#);

[«On Protection of the Right to Housing of Internally Displaced Persons and Other Victims»](#);

**«On Additional Measures for Protection of the Right to Housing of Individuals in Special Circumstances».**

In Ukraine, nationwide housing programs are in place – **Affordable Housing and Own Home**, however the IDPs are not the primary but just one of the categories of persons eligible to take part in them. In addition, these programs are not effective in resolving the housing problem of IDPs due to the high cost of the housing per square meter, inadequate funding of the programs (Affordable Housing) and provision of the housing primarily in rural areas (Own House).

At the beginning of 2019, the Accounting Chamber of Ukraine developed a proposal to its colleagues from INTOSAI (200 member states) to create a **special working group on the audit of the assessment of losses and damages** caused by a military conflict and the application of funds for the elimination of the consequences of the military conflict.

## CONCLUSIONS

### Ukraine lacks:

- ✓ comprehensive state strategy for social protection of civilians affected by hostilities;
- ✓ a centralized system of recording the losses incurred in connection with the armed conflict, which makes it impossible to estimate the scale of losses and to calculate the necessary amount of assistance to victims of the conflict;
- ✓ state register of damaged/destroyed immovable property;
- ✓ mechanisms for effective investigation and judicial settlement of cases of damage caused by the armed conflict;
- ✓ assessment of the housing needs of the IDPs and special nation-wide programs for IDPs exclusively, that would create opportunities for purchasing, obtaining preferential loans, lease on favorable conditions or otherwise obtaining housing.

## RECOMMENDATIONS

### To Verkhovna Rada of Ukraine:

- ✓ To initiate elaboration, joint discussion with civil society, followed by the decision on registration and consideration of draft laws [on the Principles of the State Policy for Protection of Human Rights in the Context of Addressing the Consequences of the Armed Conflict, on the Restitution of Property and Reparation to Internally Displaced Persons, Refugees and Other Victims; on Protection of the Right to Housing of Internally Displaced Persons and Other Victims; on Additional Measures for Protection of the Right to Housing of Individuals in Special Circumstances.](#)

- ✔ To initiate amending Article 7 of the Law of Ukraine on Peculiarities of State Policy on Ensuring State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Regions by paragraph 4 of the following content: «In order to provide the state with information on human and material losses incurred due to the armed aggression of the Russian Federation, both in the controlled territory and in the territory occupied by the Russian Federation, the State Register of Persons and Property Affected as a Result of the Armed Conflict shall be created and shall operate. The procedure for the operation of this register shall be established by the Cabinet of Ministers of Ukraine».
- ✔ To expedite the consideration of the draft laws No. 6472 dated May 18, 2017 [on the Provision of Housing Assistance to Citizens of Ukraine whose Housing has been Destroyed \(Destructed\) or Damaged as a Result of Armed Aggression by the Aggressor State](#); No. 2167 of February 18, 2015 on amendments to the Law of Ukraine [on the Protection of Rights and Freedoms of Internally Displaced Persons \(regarding compensation of the value of damaged property\)](#).

**To the Cabinet of Ministers of Ukraine:**

- ✔ To implement without delay entry of data on the amount of civilians, including internally displaced persons who have suffered health disorders as a result of injury, contusions, mutilation or other illness caused by military actions or their consequences.



- ✔ To develop a mechanism for establishing a causal link between the illness of a civilian and the armed conflict events, followed by revision of relevant payments from the compulsory state social insurance.
- ✔ To introduce a procedure for the provision of psychological rehabilitation services and assistance to civilians affected by armed conflict and their families.
- ✔ To ensure free access of internally displaced persons to their savings in banking institutions and guarantee their right to access their funds without restrictions or discrimination.
- ✔ To establish a special register of lost or abandoned property of internally displaced persons, refugees and other civilians affected by the conflict, including the documentation of any sale of such property, and to obtain from IDPs information on the circumstances of the sale in order to identify cases of forced sale.
- ✔ To establish an independent, transparent and non-discriminatory procedure for documentation, investigation and verification of property ownership and other rights of possession for housing, land and other property.
- ✔ To establish independent, transparent and non-discriminatory procedures and mechanisms for the restitution of rights for housing, land and property, including the ownership of movable and immovable property, with a view to ensuring future restitution or reparation.
- ✔ To develop a procedure for payment of adequate compensation in cases where restitution is impossible.

- ✔ To perform an evaluation of the housing needs of IDPs, to initiate new state targeted programs or modify the existing targeted programs, while developing a unified methodology for distributing social and temporary housing, taking into account the criterion of vulnerability of IDPs as a separate category of persons.
- ✔ To seek specialized technical assistance and cooperation from relevant international institutions for the rehabilitation of housing, land, and other property, as well as for best practice and experience on these issues acquired by the member states of the Council of Europe.

#### **To the local authorities:**

- ✔ To develop regional housing programs for IDPs and introduce specific local-level solutions that would provide opportunities for IDPs to purchase housing on the basis of co-financing from regional budgets or to rent a housing unit (withdrawal of housing facilities in which the IDPs live from temporary housing funds to be transferred for rent or in ownership of the IDPs; the transfer of non-residential objects into residential buildings aiming at their further reconstruction into the living premises for the placement of IDPs, etc.).

**While drafting the recommendations, the following author sources were used:**

- **Reparation for victims of the conflict. Does the government offer anything apart from recognizing disability and a pair of crutches?** / B. Moysa, edited by: O. Pavlichenko, O. Martynenko / Ukrainian Helsinki Human Rights Union. — K., 2018.
- **Improvement of National Legislation on the Protection of the Human Rights of Internally Displaced Persons** / the Council of Europe Project “Strengthening the Human Rights Protection of Internally Displaced Persons in Ukraine” within the framework of the Council of Europe Action Plan for Ukraine 2015-2017, 2016 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680693ca7>
- **Preliminary work of Anastasiia Volkova in the framework of the Council of Europe Project “Strengthening the Human Rights Protection of Internally Displaced Persons in Ukraine”** (draft publication), 2019.
- **Analytical review of the regional housing programs for internally displaced persons** / Right for Protection Charitable Foundation with the assistance of the UN Refugee Agency (UNHCR), 2018. [http://vpl.com.ua/wp-content/uploads/2018/11/UA\\_IDPs\\_housing-programs\\_review.pdf](http://vpl.com.ua/wp-content/uploads/2018/11/UA_IDPs_housing-programs_review.pdf)
- **Preliminary work of the Working Group on Housing Issues, Restitution and Compensation for Loss of Property of the Inter-Agency Working Group on the Improvement of National Legislation on the Protection of the Human Rights of Internally Displaced Persons** established under the Ministry for Temporarily Occupied Territories and Internally Displaced Persons of Ukraine (2016-2017) with the technical assistance of the Council of Europe Project “Strengthening the Human Rights Protection of Internally Displaced Persons in Ukraine”, implemented within the framework of the Council of Europe Action Plan for Ukraine 2015-2017.

This publication is developed in the framework of the activity of **CivilM+** platform.

**CivilM+** is an independent international civil society platform, which mission is to active integration of civil initiatives to restore the Donetsk and Luhansk oblasts as peaceful, integrated and developed regions as part of a democratic Ukraine and a united European space, with the active participation of the region's population and those who have left the region due to the conflict.

The **CivilM+** platform offers its participants the opportunity to collaborate as part of joint initiatives and projects, to develop and express joint positions, provide mutual support and solidarity, systematise knowledge, raise levels of qualification and improve coordination.

Platform **CivilM+** was launched in December 2017 thanks to the joint effort of the civil society representatives from Ukraine, Russia, Germany and France.

More about the platform and it's members on the web-site [civilmplus.org](http://civilmplus.org)

The platform was created in the framework of the project «Dialogue for understanding and justice: European NGOs working together for conflict resolution in Donbas» implemented by DRA e.V thanks to the kind support of the Federal Foreign office of Germany



Federal Foreign Office