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# What should the International Register of Damage take into account when designing procedures for submitting and reviewing applications concerning destroyed or damaged housing?



***Established in 2023, the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine is the first of three elements of the international mechanism for compensation of damages caused by the war against Ukraine. It is expected that the first applications to the Register will concern housing damaged or destroyed in the war.***

***This document outlines the major challenges faced by owners of damaged or destroyed real estate when documenting losses with a view to obtaining compensation. These challenges should be taken into account when determining evidentiary standards, in particular in the work of the Register of Damage, which will ensure their flexibility and adaptability to the conditions in which victims of the Russian war find themselves, especially in the temporarily occupied or de-occupied territories, as well as in the territories where hostilities are ongoing. The above challenges can be addressed by improving the state policy in the field of registration of rights to real estate and changing approaches to documenting such losses.***

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Photo on the cover - Kostyantyn and Vlada Liberovy. Bakhmut. July 2022

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## Introduction

The aggressive war waged by the Russian Federation against Ukraine has caused tremendous devastation. As of January 2024, direct damage to Ukraine's infrastructure alone is estimated at \$155 billion<sup>(1)</sup>. Millions of people have suffered losses that are subject to compensation under international law.

According to “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”<sup>(2)</sup>

“15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. [...]

20. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

*(a) Physical or mental harm;*

*(b) Lost opportunities, including employment, education and social benefits;*

*(c) Material damages and loss of earnings, including loss of earning potential;*

*(d) Moral damage;*

*(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.” (Article IX(15, 20))*

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(1) According to Kyiv School of Economics: <https://damaged.in.ua/damage-assessment>

(2) Office of the High Commissioner for Human Rights of the UN <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

At the Council of Europe Summit in May 2023, the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine was established(3). The Register is the first of three elements of the international mechanism of compensation for damage caused by the war against Ukraine. The next steps include the establishment of a compensation commission and a fund.

The Register will be a platform that allows victims to record the damage they have suffered and to submit their claims for compensation for losses incurred as a result of Russia's internationally wrongful actions in Ukraine since February 24, 2022. All affected individuals and legal entities, as well as the state of Ukraine, will be able to submit the relevant claims and information about the damage suffered.

At the end of February 2024, the second meeting of the Registry Board was held(4) in The Hague. At this meeting, it was decided that the submission of claims for compensation for damages caused by Russian aggression will start in April this year. The first category of claims to be processed by the Register is claims relating to **war-damaged or destroyed housing**.

In particular, the Register Board noted:

*“The April launch of the submission of claims will cover one category, namely damage or destruction of residential immovable property. The Board has chosen this category because destruction of homes has an immense impact on people’s lives. Some 300,000 to 600,000 claims are anticipated and substantial evidence is readily available.”*

Considering the upcoming launch of the application process, an urgent issue that war victims will face is the question of proving the damage and its amount.

In this context, Ukrainian civil society seeks to help ensure that the compensation mechanism is accessible to all victims.

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(3) Council of Europe <https://www.coe.int/en/web/portal/-/council-of-europe-summit-creates-register-of-damage-for-ukraine-as-first-step-towards-an-international-compensation-mechanism-for-victims-of-russian-aggression>

(4) Ministry of Justice of Ukraine <https://minjust.gov.ua/news/ministry/vidbulosya-druge-zasidannya-radi-mijnarodnogo-reestru-zbitkiv>

Analysis of the practice of the UN Compensation Commission(5) in terms of the evidentiary standards it applied leads to the conclusion that the approach to evidentiary standards within the framework of compensation mechanisms related to war and mass incidents of damage cannot be anything other than **flexible and responsive to the exceptional circumstances** in which the damage was caused. The **burden of proof imposed on victims of war should not become an excessive, unbearable burden** - it should be tailored flexibly to the circumstances in which victims find themselves and to the realities of wartime that limit the ability to collect and present evidence.

Taking into account the realities on the ground and actual administrative practice is necessary to ensure that the burden of proof is realistic and does not prove to be prohibitive, making the right to compensation a sham for many victims of war.

In particular, in an ongoing war, owners of destroyed or damaged real estate may struggle with filing claims for compensation due to the difficulty or impossibility of providing evidence to prove their ownership, describe the extent or nature of the damage, etc. For example, these properties may be located in the temporarily occupied territories or in close proximity to the areas where hostilities are taking place, and documents confirming ownership may be destroyed, damaged or unavailable. In addition, there are other circumstances not related to the war that may affect the comprehensiveness and validity of the supporting evidence.

In this regard, it seems important to explore the factors that affect the ability of individuals to establish the appropriate evidentiary foundation required to submit claims to the Register and receive compensation.

To this end, we draw your attention to a number of hardships faced by owners of damaged or destroyed residential property that should be taken into account when determining the evidentiary standards for the future international compensation mechanism.

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(5) Evidentiary standards in the practice of the UN Compensation Commission: Lessons for Ukraine. Think Tank "Institute of legislative ideas". 2024.  
<https://izi.institute/en/research/evidentiary-standards-in-the-practice-of-the-un-compensation-commission-lessons-for-ukraine/>

## **Hurdles faced by owners of destroyed or damaged residential property in documenting damage with a view to obtaining compensation**

For more than 2 years of full-scale invasion and more than 10 years of Russian aggression in Ukraine, the whole world has seen the targeted destruction of civilian infrastructure by the Russian military, which the Putin regime does not hide. In Ukraine, bomb and missile attacks on schools, hospitals, residential buildings and other civilian objects, as well as indiscriminate shelling of towns and villages, take place daily. These crimes result in enormous destruction of real estate.

According to the latest estimates<sup>(6)</sup>, more than 250,000 residential buildings have been destroyed or damaged as a result of the war in Ukraine, with a total value of almost \$60 billion. The regions with the highest number of destroyed residential buildings include Donetsk, Kyiv, Luhansk, Kharkiv, Chernihiv, and Kherson. Active hostilities continue in most of them.

In the course of documenting war crimes and providing legal assistance to war victims, the Ukrainian Helsinki Human Rights Union (hereinafter - UHHRU) gathers information about the problems that owners of destroyed or damaged real estate face when seeking partial compensation under Ukrainian state programs.

Many of these problems are related to the inability of claimants to provide the proper evidence required for the consideration of a compensation claim. Since submitting claims to the Register is likely to require the provision of the similar evidence, it is reasonable to take these circumstances into account and focus on finding ways to strengthen the applicants' ability to compile a sufficient evidential support.

Below is the information summarized by the UHHRU on the most common hurdles associated with obtaining compensation for destroyed or damaged property, collected from our experts involved in documenting war crimes and providing legal aid to war victims.

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(6) According to Kyiv School of Economics as of January 2024:  
<https://damaged.in.ua/damage-assessment>

## Hurdles in submitting documents proving ownership

Proof of ownership of real estate requires the owner to provide relevant supporting documents. In Ukraine, such documents include a certificate of ownership (which was issued before 2016) or an excerpt from the State Register of Real Property Rights on the registration of ownership. Other title documents that confirm the ownership basis may include a sale and purchase contract, a gift contract, a life care contract and other contracts, a court decision, a certificate confirming the right to receive an inheritance in accordance with the procedure established by law or a will.

In many cases, such **documents have been lost, damaged or destroyed** as a result of hostilities, hasty evacuation of the owners or other war-related reasons.

Depending on the circumstances, in particular, taking into account the inclusion of information on the ownership in the State Register of Real Property Rights (after January 1, 2013, when this register was launched) or paper registers of the Bureau of Technical Inventory (before January 1, 2013), owners may obtain new documents or establish the fact of ownership by applying to the court. However, in times of war, the exercise of this right is complicated and may be excessively costly for victims of war.

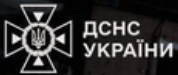


Photo: State Emergency Service of Ukraine  
The city of Kryvyi Rih. 12.03.2024



The State Register of Property Rights to Real Estate still lacks information on a significant number of properties whose owners may be entitled to compensation. Prior to the launch of this registry and the start of its operation (on January 1, 2013), information on real estate ownership was contained in paper registers of the bureaus of technical inventory. Not all of this information was transferred to the electronic state registry, and much of it was **irretrievably lost** during the hostilities due to the destruction or damage to the premises where it was stored.

The registers also do not contain information on the ownership of rural houses that were purchased by citizens from **communal farms** in the process of privatization. The documents certifying the acquisition of ownership in such cases are not considered valid by law. In addition, these documents contain many mistakes (in surnames, street names, localities) because they were hastily prepared by people without proper qualifications.

Often, the actual owners of real estate that may be eligible for compensation do not have **any documents** confirming their ownership at all. This problem is particularly prevalent in villages and towns, where the cost of private houses is comparable or even lower than the cost of formalizing ownership. Such houses are bought and sold using promissory notes, for cash, and without proper title registration.



Photo: State Emergency Service of Ukraine  
The city of Sumy. 3.03.2024

For the same reasons (substantial costs associated with title registration), heirs often refrain from accepting inheritances that include ownership of real estate.

Another widespread problem is the lack of documents confirming the ownership of **unauthorized construction**. A residential house, building, facility, or other real estate is considered unauthorized construction if it was built or is being built on a land plot that was not allocated for this purpose, or without a relevant construction permit or without a duly approved project, or with significant violations of building codes and regulations(7). A person who has carried out or is carrying out unauthorized construction of real estate does not acquire ownership of it. The practice of unauthorized construction is so widespread in Ukraine that the legislation provides for several mechanisms that allow legalizing the constructed real estate and the ownership of such real estate. At the same time, the use of such mechanisms requires the owner to interact with public authorities, which can be a difficult task, especially in areas where hostilities are taking place or in temporarily occupied territories.

Another issue is the **non-recognition by Ukraine of documents** related to ownership of real estate issued in the temporarily occupied territories.

Some of these problems can be resolved by contacting notaries, state registrars or administrative service centers. At the same time, there are significant difficulties in accessing notarial services in communities located close to the areas of hostilities or temporarily occupied territories. In some communities consisting of many settlements, such services are provided by only one notary, and the queue for the first consultation is formed several months in advance.

## **Difficulties in documenting the destruction of real estate**

Owners of real estate located in the areas where hostilities are taking place or in the temporarily occupied territories are often unable to provide **evidence of the destruction** of such properties because they do not have safe access to such properties.

For the same reasons, the commissions responsible for awarding compensation for destroyed real estate established by local authorities, military administrations or civil-military administrations cannot inspect

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(7) In accordance with the Civil Code of Ukraine

incomplete construction projects or destroyed real estate. Upon the decision of such a commission, the term for consideration of an application may be extended by 30 calendar days if the destroyed real estate is located on the territory of a community located in the area of military (combat) operations or is under temporary occupation, encirclement (blockade).

However, this does not mean that the required examination will be carried out.

It should be noted that working in these commissions requires the participation of qualified personnel. Given the mass migration, military mobilization and security risks in areas close to the areas of hostilities or temporarily occupied territories, the **commissions are composed of people who are not properly qualified**. For example, there is a shortage of engineers capable of determining and describing the extent and nature of damage to real estate, assessing it, etc. The commissions may, upon consent, involve representatives of state bodies, local governments, enterprises, institutions, organizations, experts, appraisers, appraisal entities, performers of certain types of works (services) related to the construction of buildings, representatives of international and non-governmental organizations. However, this opportunity often cannot be utilized in practice.

These and other obstacles, in turn, increase the time it takes for the commissions to complete their tasks and the actual timeframe for making decisions on compensation. Against the backdrop of these challenges, the interest of owners of destroyed or damaged real estate in the promptness of the commission's decision-making, as well as in its approval of the maximum possible amount of damage, may provoke corruption or a superficial approach to the commission's exercise of its powers.

The difficulties associated with documenting the destruction of real estate may also be attributed to the peculiarities of organizing the operation of state bodies and their interaction with the owners of real estate. For example, some owners recognized as victims in criminal proceedings are often unable to obtain documents confirming their status (extracts from the Unified Register of Pre-trial Investigations), since the receipt of applications for war crimes and examination of the crime scene were carried out by mobile groups consisting of representatives of the police and other law enforcement agencies, who left the area after completing

and do not keep in touch with the owners of destroyed or damaged real estate.

The comprehensive nature of the measures aimed at documenting the facts of destruction or damage to real estate, the novelty of the relevant mechanisms, and the lack of understanding of the procedures performed by other government entities result in bizarre incidents. For example, representatives of a government agency required persons seeking compensation to obtain a stamp on the excerpt from the Unified Register of Pre-trial Investigations.

Despite the significant success of the Ukrainian government in digitalizing public administration processes, including communication with victims, in some places the procedure for documenting property damage on the ground is still carried out in a paper-based manner. In this case, there is always a risk that the evidence collected may be destroyed. An unfortunate case was recorded by the UHHRU team when an authorized representative in a frontline village had been documenting the damage caused to residents for more than a month, but due to a Russian missile strike on the administration building, all the information documented on paper was destroyed, and the man himself was killed.

## **Challenges in accessing information on the availability of compensation**

In many cases, the destruction of or damage to real estate is not documented or is documented with a significant delay, as their owners believe that they have already provided the necessary information to journalists or other persons who are not actually involved in the procedure of documenting and providing compensation. The reason for this may be the lack of awareness about the rights of owners of destroyed and damaged property and the procedure for documenting losses that precedes compensation.

## **Other issues related to obtaining compensation**

An important point should be made in the context of filing claims for destroyed or damaged real estate and partial compensation by the Ukrainian government for the damage caused.

At present, compensation provided by the state or aid provided by other entities (including international organizations) usually does not cover the true value of destroyed or damaged real estate. Existing support programs cover only a small part of the value of what people have lost due to the Russian war.

Homeowners who have received emergency aid from international organizations can no longer claim compensation from the state, despite the fact that such aid has only covered part of their housing reconstruction needs.

Aid for the restoration of damaged housing covers the purchase of construction materials, but the cost of construction and repair labor is not taken into account. Homeowners, especially the elderly, do not have the resources to use these materials and repair their homes, i.e., they cannot afford to hire the needed professionals.

## Conclusions and recommendations

It cannot be allowed that war victims are deprived of the right to compensation because of the aforementioned obstacles. That is why the described systemic issues that affect the principal possibility of proving ownership of real estate and related events in wartime should be taken into account when determining the evidentiary standards used by international compensation mechanisms, including the Register of Damage.

Some of these obstacles can be eliminated by changing and improving administrative practice (such as obstacles related to the lack of professionals), others by ensuring transparency and zero tolerance for corruption in the operations of the authorities and institutions involved, and others by developing judicial practice to correct errors made in registration documents. Finally, there is a clear need for targeted changes to legislation that would take into account the special conditions in which people live in the temporarily occupied or de-occupied territories, as well as in areas where military operations are ongoing. It is also necessary to conduct training for officials and employees, educational events for the public, provide legal aid, enhance awareness, etc. Implementation of these measures will help to ensure the right of millions of victims of the Russian war to compensation for damages.

Probably, some of these obstacles won't be resolved immediately. The Ukrainian authorities have spent a lot of time overcoming some of them, but have not been able to achieve conclusive results. For example, this applies to unauthorized construction or shadow sales of real estate in rural areas. At the same time, the mechanism for submitting evidence to the Register should take into account the real state of affairs, which does not always meet the requirements of national legislation. The development of such a mechanism should not be overly dependent on the efforts of the Ukrainian authorities to eliminate the abovementioned obstacles, but should aim to ensure the right to compensation for all victims of the war. While we fully share the need to prevent abuses of compensation, we also emphasize the right of all victims of war to receive such compensation, including for destroyed or damaged property, using approaches that facilitate the submission of evidence. To this end, where possible and necessary, we propose to use the capabilities of the Register itself, its participants and the state of Ukraine to collect evidence of damage or to strive to provide at least minimal compensation, provided that all participants in the relevant procedures have exhausted all such capabilities.

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