



Ukraine: Land Tenure Role in Building Back Better

The unfolding war in Ukraine has led to destruction of life and property, food insecurity and human rights violations. It also has immediate land access and tenure dimensions, including key land and geospatial information aspects.

A. Land tenure and armed conflict

Armed conflict can lead to disintegration of property rights, and the importance of property, land, homeland, and territory to the cause and conduct of conflict presents particular dilemmas for a peace process. An end to armed conflict, especially prolonged civil conflict, creates a situation whereby a significant proportion of the affected population will begin to claim, re-claim, or access properties, lands, and land-based resources. The result is that land and property rights issues can be thrust to centre stage over large geographic areas in a short period of time for considerable numbers of people. And like the complex histories involving property, land, and territory that lead to conflict scenarios, post-war re-establishment of ownership, use, and access rights will likewise be complicated and problematic. Left unattended, land and property issues can provide significant potential for renewed confrontation.¹ In order to address land tenure adequately it important to take into consideration the relevant questions to relevant to emergency, infrastructure and policy development and implementation phases (see annex).²

FAO has provided technical assistance to improving access to land in a number of countries emerging from violent conflict within the context of food security, poverty alleviation and rural development. While every conflict situation is likely to be different, they nevertheless share a number of common characteristics.

Attempting to address only pre-conflict territory, land, and property issues in a peace process (especially in a peace accord) can miss the very volatile tenure issues on the ground which develop during conflict, and which are most operative at the close of a conflict. While such issues can build upon pre-conflict tenure problems, they nonetheless act to thrust the post-conflict lands situation in new directions. This is primarily because the social and spatial repercussions of violence, dislocation, destruction of property, battlefield victory and loss, and food insecurity, together with the breakdown of administrative, enforcement, and other property-related institutions and norms, significantly alter ongoing relationships between people(s), land uses, production systems, and population patterns. Armed conflict and its repercussions reconfigure the network of social relations upon which all land tenure systems depend.³

FAO's Land Tenure experience has observed that providing secure access to land is frequently not easy, and it is particularly complex in situations following violent conflicts: getting the answer right can go directly to the matter of achieving sustainable peace. The effects of violent conflicts are usually widespread in a country but they can be particularly severe in rural areas. Violent conflict in rural areas can result in vast numbers of people being displaced. Rural areas often lack access roads and other infrastructure and services, and their

¹ *Land and Property Rights in the Peace Process*; Unruh, J.D., 2004, Intractable Conflict Knowledge Base Project, Conflict Research Consortium, University of Colorado. see https://www.beyondintractability.org/essay/Land_tenure

² *Post-conflict land tenure using a sustainable livelihoods approach*; Unruh J.D.; FAO Livelihood Support Programme (LSP), Rome, 2004, see <https://www.fao.org/3/j5415e/j5415e00.htm#Contents>

³ *ibid.* see https://www.beyondintractability.org/essay/Land_tenure

absence hampers the establishment of good governance during the transition to peace. Following conflicts, access to land in rural areas is required by those displaced. Of particular importance in such an environment is the recognition of the vulnerable which invariably include women and children, and may also include ethnic or political minorities and small scale farmers / family farming.

While involving in land tenure issues is of lower priority in the emergency phase, tenure and land information have an essential role and should be at the centre in the recovery, reconstruction and prevention of such human-induced hazards in Ukraine.

B. Brief overview of land tenure and the land administration system of Ukraine⁴

Ukraine is richly endowed with resources for agriculture, particularly fertile arable lands, placing it among the world's largest grain and vegetable oil exporters. The country is classified as a lower-middle income economy. Over the last 20 years, Ukraine has privatized ownership of both rural and urban land, drawing upon significant amounts of technical assistance from donors, including USAID, the World Bank, FAO (alone and in partnerships), EU, Germany, and others. Initial transfers of farmland from 9,350 collective and 4,659 state farms in 1992 enabled households to acquire up to 1.25 hectares of land to produce food for their own consumption. Nearly one third of Ukraine's 45.2 million people now live in rural areas and have ownership of some land, although not all rural households are full-time farming households. In 2007, the average family farm size was about 3.2 hectares.

According to the International Trade Administration, Ukraine is one of the most fertile places on the planet, with 25-30 percent of the world's black soil reserves. With over 41 million hectares of agricultural land, covering 70 percent of the country, agriculture is Ukraine's largest export industry. Unfortunately, the absence of a functioning, private land market; limited investment in the agricultural sector; and corruption in land management, have impeded agricultural growth, prevented landowners and communities from effectively managing their resources, and deepened rural poverty. The Government is implementing numerous reforms (land, tenure governance, land markets, land management decentralization, and other).

Ukraine's land administration system is based on two separate institutions: a modern digital cadastre⁵ based on recent (2009-2013) ortho-photo maps of the whole territory of Ukraine (including Crimea, Donetsk and Lughansk), and a legal land registry⁶, which are integrated in the e-government and national spatial data infrastructure. The legal land records are paper-based, digitized and backed-up by the digital land administration information systems. Approximately, there are 6.9 million owners of land plots in Ukraine. A gradual process of land registration continues. As of February 2021, the State Land Cadastre had registered 73 percent of the total land in Ukraine (43.8 million ha or 22.5 million land plots) and 75% of agricultural land in particular (32.1 million ha or 15.1 million land plots)⁷.

Privatization of non-agricultural land has been less problematic. It is more readily registered, marketed, and transferred. There was a moratorium on the agricultural land markets until recently (2021), and these markets are still in a nascent / emerging phase. There is a market for pre-emptive land rights, before the full

⁴ after: USAID LandLinks: Country Profile of Ukraine, see <https://www.land-links.org/country-profile/ukraine/> and <https://www.usaid.gov/ukraine/news/private-sector-frontlines-land-reform-unlock-ukraine%E2%80%99s-investment-potential>

⁵ State Service of Ukraine for Geodesy, Cartography and Cadastre (StateGeoCadastre)

⁶ Department of State Registration of Real Property Rights and Encumbrances at the Ministry of Justice

⁷ *White paper: Strategy for the development of land relations in Ukraine*; May 2021; Land Transparency, Kyiv School of Economics, Ministry of Agrarian Policy and Food of Ukraine, with the support of EU

opening of the agricultural land markets. Land reform in Ukraine goes hand-in-hand with decentralization that entitles communities to the ownership of previously state-owned land.

Disputes over property rights mark the Government of Ukraine's relationships with the Russian Federation on the territories of Crimea (occupied by the Russian Federation in 2014) and certain districts of Eastern Ukraine Donetsk and Lughansk Regions (ORDLO) (also occupied by the Russian Federation in 2014). With 1.785 million persons internally displaced as a result of the 2014 Russian aggression, property rights issues of the Temporarily Occupied Territory are likely to remain on the agenda for some years to come.

C. Key land tenure actions to be taken in different phases

As FAO engages with emergency response and prepares itself for recovery and reconstruction. It is relevant to make sure that key land tenure interventions should be considered in each of these phases:

1. Emergency response phase⁸

- Support to cadastre and property registration authorities for assessment of damages, if any, to digital and analogue records, and development of land records recovery plan.

2. Recovery phase

- Support in solving tenure issues and protection of tenure rights for internally displaced persons (IDPs), refugees and other vulnerable groups affected by the conflict – by establishing advocacy groups on the ground and by providing institutional support in land administration (land registry, cadastre, valuation);
- Support in damage assessment (using land valuation data sets) for fair compensation and distribution of subsidies in a transparent manner and mitigating risks of possible corrupt practices in access to financial resources for reconstruction and agriculture;
- Support to solving land tenure aspects of rehabilitation of housing and agriculture, physical infrastructure (incl. land mines issues, access roads, access to water / irrigation, and others) and tele-communications;
- Support in designing land taxation measures for the recovery phase.

3. Building Back Better – reconstruction phase

- Support to solving land tenure and management issues related to abandonment of agricultural land;
- Support to efficient land tenure services in land development and (re-)construction;
- Support to longer-term land reforms, including land markets developments, access to land for young farmers, women, small holders and other vulnerable groups, and impact monitoring and evaluation; agricultural land taxation policy, and others
- Support to closing capacity gaps for tenure governance and land management in the context of recent decentralization of state land management to the local authorities in Ukraine, including focus on spatial / territorial planning and rural development issues at the local and higher levels;
- Support to the application of land management tools (land banking, land consolidation, prevention of land fragmentation, land abandonment, land grabbing, and others) to support small holder farmers, women, youth and start-up farms in the conditions of emerging agricultural land markets in Ukraine;
- Mainstream the use of land (tenure, cadastre) and geospatial information and modern technology tools (e.g. Unmanned Aerial Vehicles and satellite imagery, Earth Observation / remote sensing) in support of land management by local authorities, as well as for agricultural crops monitoring;

⁸ Actions here could be a part of the late emergency and early recovery phases, since relevant land tenure and geospatial data sets and applications are already in place. These include also possible support to small holder farmers for seeds distribution, monitoring the distribution progress, crops productivity – by working with the academic and government stakeholders in Ukraine.

- Support to the land administration system (cadastre, land registration, land valuation, land development) and geospatial information (mapping) management by assessing it for recovery, rehabilitation and improvements – to enhance the economic, social and environmental resilience at community and national levels;
- Support the establishment or strengthening of dispute resolution mechanisms to resolve tenure rights disputes in a manner that recognises and respects tenure rights and supports long-term peace.

The implementations of such actions will require close collaboration with the State Service of Ukraine for Geodesy, Cartography and Cadastre (StateGeoCadastre), the Department of State Registration of Real Property Rights and Encumbrances at the Ministry of Justice, the National Academy of Agrarian Sciences, the Ministry of Agrarian Policy and Food of Ukraine and the Municipalities (hromadas)

D. FAO experience:

FAO Land Tenure Teams in HQ and REU have the following experiences:

- Direct involvement in Ukraine in (FAO-WB CP) development investment projects on rural land titling, land administration system modernization, national spatial data infrastructure, FAO TCP projects on land consolidation, (rural) land markets development, land abandonment and others;
- Proactive involvement in resource mobilisation with REU and other technical divisions for the above tenure governance themes;
- Coordination with other development organisations and partners such as EU, WB, USAID, German-Ukrainian Cooperation, in the provision of land tenure support for Ukraine;
- All land tenure-related work is carried out within the framework of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), with specific attention to gender-responsive strategies, which is particularly important in post-conflict settings as conflict can worsen discrimination against women.

Annex:

Key land tenure questions during various activities following conflicts

1. During emergency activities:

- What are the priority issues in relation to providing access to land and the development of a functional land administration? And what interim policies (if any) can be quickly developed and implemented to deal with emergency land access issues?
- What are the similarities and differences between 'ordinary' land access issues and those associated with the post-conflict environment?
- What is the scope of government power to give improved access to land? To what extent is this affected by the type of government (e.g. international transitional administration or independent government)?
- Is land access on the political agenda?
- What means are available to develop and implement land policy initiatives?
- What are the likely limitations on re-establishing an operational land administration?
- What are the main land-related issues affecting good governance and how can they be addressed?
- What issues should administrators be wary of tackling?
- What ability is there to communicate effectively with the region's peoples?
- What ability is there to communicate effectively with other arms of government, international organizations and NGOs? Do the necessary institutions exist and are they coordinated? Which institutions should be dealt with?
- Who must be consulted in respect of land-related issues? In what form should consultation take place? How should it be managed?
- Are there vulnerable groups? Who are they? Can their plight be prioritized? How?
- What land tenure systems / legal infrastructures notionally exist? (e.g. formalized written legal systems, unwritten customary systems). What legal institutions remain, if any? What institutions should be re-established?
- What are the characteristics of the former / existing legal infrastructure? Does it conform to recognised human rights standards? If not, what is to be done about them?
- What local expertise is available to advise / manage re-establishment of new or existing legal / infrastructure?

- What changes, if any, are required to make land administration systems operational again?
- What official and unofficial records of land rights exist and where do they reside?
- From what buildings / regions does land administration process operate?
- What changes, if any, are required to make land administration systems operational again?

2. During activities related to infrastructure and policy development

- What more formal policies are developed to facilitate access to land?
- What sustainable administrative infrastructure is required to implement the formal policies proposed?
- What resources (in terms of expertise and equipment) are potentially available to implement the formal policies proposed?

3. During activities related to policy implementation

- Is there public awareness of the policies and procedures?
- Are the human and other resources adequate to implement policy in the proposed institutional framework?
- Are the policies implemented working? If not, why not? (this pre-supposes that appropriate quantitative and qualitative indicators have been identified for monitoring and evaluation purposes)
- How can policy implementation be effectively monitored and evaluated?
- What part can land administrators and Governments play in facilitating access to land?