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**ПРОГРАМА РОЗВИТКУ ДЕРЖАВНО-
ПРИВАТНОГО ПАРТНЕРСТВА**

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Social Housing Construction for IDPs: Legal Issues

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1. Internally Displaced Persons (IDPs) -

citizens of Ukraine, permanently residing in the territory of Ukraine, that were forced or voluntarily left one's place of residence as a result of or in order to avoid the negative effects of armed conflict, temporary occupation, situations of generalized violence, mass violations of human rights and natural or human-made disasters.

(the Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons")



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2. United Nations Guiding Principles on Internal Displacement states

At the minimum, **regardless of the circumstances**, and without discrimination, competent authorities shall provide internally displaced persons with and **ensure safe access to Adequate housing**.



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3. “Adequate housing” is

- legal security of tenure, especially in the form of protection against forced evictions;
- available services and infrastructure;
- affordable housing costs;
- habitability in the sense of adequate space, physical safety, and protection from cold, damp, heat, rain, wind, structural hazards, and disease vectors;
- compliance with safety standards aimed at minimizing damage from future disasters.



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4. Ukrainian Practice vs UN Guidelines on Displacement

ISSUES THAT ARE TO BE ADDRESSED

UKRAINIAN LEGISLATION RE IDP_s

Recognize the right to basic shelter and adequate housing for IDPs.

Constitution of Ukraine recognizes the right on housing for each citizen of Ukraine. There are no special provision as per recognition of this right in any specific way by the IDPs

incorporate housing issues in national coordination mechanisms, facilitating international technical assistance and empowering local government responses

International technical assistance is legally facilitated; there was no incorporation of housing issues in national coordination mechanisms

take into account IDPs' pre-displacement and current housing traditions, practices, and needs;

Not possible for the present moment in Ukraine from the legal point of view

build on consultation of IDPs on their housing needs and their participation in the design of programs and services to help them meet these needs, taking into account their pre-displacement housing practices;

IDPs are provided with consultation on their housing needs

protect IDPs against forced eviction;

No special legal provisions. In accordance to the general legal rule any tenant may be evicted in case of the termination of lease agreement

provide appropriate assistance to IDPs to allow them to find adequate and sustainable housing solutions in the context of re-integration.

The Law implements the right of IDPs on obtaining preferable bank loans for housing construction.



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5. Legal Basis for Social Housing Construction

- the Constitution of Ukraine;
- the Law of Ukraine "On Public-Private Partnership";
- The Law of Ukraine "On Regulation of Urban Development"
- The Law of Ukraine "On Social Housing Stock"
- Housing Code of Ukraine
- The Law "On Ensuring Rights and Freedoms of IDPs"



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6. Public Private Partnership for Social Housing Construction

- the Project envisages a long-term partnership between the private and public (municipally owned) entities, that is characteristic of public-private partnership;
- the Project implementation provides for the transfer of a part of risks to the private partner;
- the Project implementation will potentially provide for investments on the part of the private partner, namely, in terms of funding the construction and introduction of competitive technologies. Pursuant to Article 1 of the Law of Ukraine "On Investment Activity" investments are all forms of material and intellectual values invested into objects of investment activity resulting in achievement of social effects.
- the project is of a long-term nature (over 5 years);
- the Project aims at ensuring higher technical and economic performance indicators compared to the current situation when contract works are procured with state funds from different performers and producers.
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7. PPP model: basic issues

- Allocation of land plots for the construction of affordable and social housing and leasing it to the private partner without holding an auction
- The involvement of the private partner that would meet the qualifying requirements of the Project and conclusion of the contract with this partner to undertake comprehensive development of the territory for settling IDPs pursuant to Article 33 of the Law of Ukraine "On Regulation of Urban Development";
- The provision for risk distribution within the Project between the private partner and the regional administration;
- The provision for guarantees and mechanisms of the Project funding and the ways for the private partner to recover the investment.
- The introduction of a mechanism for distributing social and affordable housing among IDPs.



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8. Public Partner (regional state administration)

- The role and legal status of regional state administrations are defined by their competences and powers under the law in force in Ukraine, namely, the Constitution of Ukraine, the law of Ukraine "On Local state Administrations", the Land Code of Ukraine and the Law on PPP.
- Pursuant to Article 19 of the Constitution of Ukraine bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine.
- The Law on PPP assigns state administrations the role of the public partner.



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9. Private Partner Role in the Project

- To **Build** and **Design** in accordance to the principal of comprehensive development of the territories;
- To ensue **Financing**;
- To **Operate** transferring social housing into lease;
- To **Transfer** into state/municipal ownership .



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10. Allocation of Land Plots for the Project

- if the public-private partnership implementation requires the use of a land parcel, the public partner shall provide the private partner with a possibility to use such land parcel for the period specified by the public-private partnership agreement.
- In accordance with Article 134 of the Land Code of Ukraine, state- or communally owned land plots are not subject to competitive sale (land sale) in case: the state- or communally owned land plots are granted to a private partner in terms of the public-private partnership according to the law, as well as for construction.
- Thus the public partner must allocate land parcel for the construction of affordable and social housing and lease it to the private partner.



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11. Comprehensive Development of Territories as a Principle of Project Implementation

- One of the principles of planning and development of territories on the local level is the principle of comprehensive development of territories that would provide the determination and efficient disposition of different functional zones, mutual coordination of state, public and private interests (Article 2 of the Law of Ukraine "On Regulation of Urban Development").
- Comprehensive development of a territory is aimed at serving public interests and at initial construction site engineering survey, construction of outer transport networks, objects for social service, housing, other objects, as well as at equipment of the territory with services and utilities (Article 33 of the Law of Ukraine "On Regulation of Urban Development").
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12. State Support: Assessment of Means, Search for Compromise

- state guarantees to ensure full or partial meeting of debt obligations on loans received by economic entities of public sector;
- direct budget financing and co-financing;
- compensation of interest rates for loans taken by transactor in commercial banks;
- partial compensation of the production cost;
- loans financed by state budget;
- subsidies from the state budget to local budgets;
- loans and grants from international financial organizations, raised by the government under state guarantees;
- tax, customs and currency preferences.



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13. Existing barriers for PPP project implementation, ways of overcoming them

- **Social barriers:** public opposition, cultural impediments, societal discontent against the private sector and IDPs, public resentment due to inflation and currency devaluation, lack of confidence and mistrust in PPPs.
- **Legal barriers:** weak /poor enabling policies, poor regulatory frameworks re IDPs and no effective enforcement, weak institutional capacity and PPPs strategy, weak judicial framework/weak judiciary for resolving PPP disputes. Lack of well-established legal framework is one of barriers to PPPs project implementation.
- **Economic barriers:** Ukraine is considered to be the country with high risk economy by foreign investors. Inability of local institutions to provide long term financing, difficulty in obtaining foreign exchange/foreign exchange risk, inadequate domestic capital markets among others are economic barriers to PPPs implementation in Ukraine
- **Environmental barriers:** land acquisition problems, lack of coordination between state and local authorities, lack of transparency and accountability, accusations of corruption and corrupt tendencies among others.
- **Political barriers:** Inadequate involvement and incapability of government to manage PPP projects lead to project failures in Ukraine (i.e. road concessions in Ukraine).
- **Technological barriers:** They are lack of experience and expertise in public sector and private investors, inconsistent risk assessment and management, shortage of professionals to handle PPP projects.



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14. Government of Ukraine Development Objectives

- Designate a governmental agency responsible for addressing shelter and housing needs of displaced persons.
- Seek and accept support from the international community
- Remove legal obstacles
- Create specific guarantees to protect IDPs against forced evictions when general guarantees are insufficient.
- Possible investors and project participants must have confidence that the laws are stable and enforceable in courts or through arbitration where appropriate. To the degree that the legal and judicial environment is not clearly defined, investors and project participants will see the project as unpredictable and high risk.
- Tax laws can be drafted or amended to create an incentive enabling environment for PPPs.



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15. Expected Benefits

- Solving the national strategic problem of IDPs resettlement; protection of IDPs rights on social housing;
- Accelerating the development of the production of building materials and of the corresponding equipment, machine building industry, metallurgy and metal working, petroleum chemistry, glass production, woodwork and timber, porcelain and faience industries, transport, power engineering, etc.
- Risk Allocation.
- Enhancing Public Management.
- Improved level of services.



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FINALLY

***Construction, more than any other branch of
economy, promotes the development of
business.***

***Thus, the development of the construction branch
inevitably causes an economic advance in the
country and provides for the necessary
conditions in solving numerous social problems***