BACKGROUND PAPER ON THE GOVERNANCE AND LEGAL FRAMEWORK FOR SPATIAL PLANNING AND RECONSTRUCTION IN UKRAINE

A Focus on Conceptual Master Plans in Kharkiv and Mykolaiv

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UN4UkrainianCities
Preface

This “background paper on the governance and legal framework for spatial planning and reconstruction in Ukraine” was developed as part of the project UN4UkrainianCities - “Enhancing urban planning in the cities of Kharkiv and Mykolaiv in Ukraine by supporting the implementation of the new master plans and facilitating investments in sustainable urban infrastructure”. The project is funded by the German Federal Ministry for Economic Cooperation and Development (BMZ) and supported by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.

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Reconstructing Ukraine: The Crucial Role of Urban Planning in the Reconstruction of Cities

The full-scale Russian invasion of Ukraine has resulted in extensive destruction and ruination. The Rapid Damage and Needs Assessment (RDNA3) finds that direct damage to buildings and infrastructure totals almost US $152 billion with the most affected areas being housing (37%), transport (22%), commerce and industry (10%), agriculture (7%), and energy (7%). The conflict has driven millions of people into poverty and reversed 15 years of poverty reduction. The RDNA3 estimates that the cost of reconstruction and recovery in Ukraine has grown to US $486 billion stretching over 10 years.

Ukraine’s urban settlements will be instrumental in laying down the essential groundwork for the country’s recovery. Actors at the local level have promptly initiated efforts to restore urban settlements that have sustained damage. Beyond addressing immediate repairs, settlements must concentrate on formulating a vision for reconstruction and long-term development of their urban environments. Initiating this process now is already imperative because the evident destruction inflicted on Ukrainian territories and their infrastructure paradoxically creates opportunities for positive change. A sustainable reconstruction process with a long-term focus can enable modernization and innovation.

Urban settlements face a complex challenge of managing various tasks at once. They must deliver essential services and reconstruct infrastructure while at the same time engage in long-term planning, strengthen local capacities, and coordinate diverse stakeholders involved in the reconstruction process. Integrated urban planning plays a key role in this context, helping to shape a visionary direction for the urban settlement, to prioritize reconstruction and development projects and to adapt to the consequences of the war. The cities of Kharkiv and Mykolaiv in Ukraine, in collaboration with international stakeholders, have started to plan for their future development. Within the UN4UkrainianCities project implemented by the United Nations Economic Commission for Europe (UNECE), they are formulating concept master plans to guide their future spatial development. The recovery of Ukraine relies on successful restoration initiatives in its urban areas. It is essential to gather insights from the developments in these two cities and thoroughly assess the legal and institutional landscape that influences their operations. This background paper investigates the governance and legal framework surrounding spatial planning and reconstruction in Ukraine. Given its focus on the Kharkiv and Mykolaiv cases, the background paper specifically addresses the context of large, urbanized settlements, so-called "cities of regional significance", particularly those that were to a lesser extent affected by the municipal amalgamation that started in 2014. In this specific territorial context, the role of concept master plans is elaborated, with their interconnections to the national-level policy and planning framework.

The Complex Path to Ukraine’s Reconstruction: Roadblocks and Key Players

The success of Ukraine’s long-term recovery relies heavily on the establishment of a well-functioning reconstruction framework, which can have a more profound impact than the individual projects themselves. On 21 April 2022, the establishment of the National Council for the Reconstruction of Ukraine from the Consequences of War marked a significant development in the country’s ongoing efforts. Following this, the Ukraine National Recovery Plan was unveiled in Lugano, Switzerland, gaining notable attention. However, despite its initial visibility, subsequent developments were limited, and the plan failed to evolve into a definitive roadmap for recovery actions. Additionally, a mechanism was absent to establish connections between its provisions and those formulated by other levels of government in

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1 An assessment by the Government of Ukraine, the World Bank Group, the European Commission, and the United Nations, see https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099021324f15085807/p1801741bea121c012189ca16d95d8c2556a
Ukraine, including regional and local authorities. Presently, Ukraine still lacks a nationally endorsed recovery plan, underscoring persistent challenges in shaping a unified and legally supported strategy for the nation’s ongoing recovery efforts.

A nation-wide strategy is under preparation as it is one of the requirements of the Ukraine Facility that was launched by the European Commission. For the support to be disbursed, the Government of Ukraine will need to prepare a “Ukraine Plan”, in close consultation with the Commission, detailing its vision for the recovery, reconstruction and modernization of the country and the reforms it intends to undertake as part of its European Union accession process. The Plan, which will be endorsed by the EU, will include structural reforms and investments aimed at lifting the growth potential of the Ukrainian economy. It will place significant emphasis on public administration reform, good governance, the rule of law, and sound financial management, including a strong focus on anti-corruption and anti-fraud, but also other reforms as well as investments that would underpin the accession process and the modernization of the economy.

Two important bodies, the Ministry for Communities, Territories, and Infrastructure Development of Ukraine (often called the Ministry for Restoration) and the State Agency for Recovery and Infrastructure Development of Ukraine (reporting to the mentioned ministry), play a crucial role in the reconstruction process. Both institutions were established in the recent past to streamline all recovery-related measures within a singular institutional framework. The Ministry for Restoration acts as the main executive body, implementing national policies to rebuild regions, territories, and infrastructure affected by Russia’s aggression. Additionally, the Interagency Commission for Recovery² acts as a bridge between local authorities and the central government. This commission is a key player in deciding on state funding for local projects, contributing significantly to the reconstruction efforts. It is headed by two positions, the Deputy Prime Minister for Restoration of Ukraine - Minister for Communities, Territories and Infrastructure Development of Ukraine and the Deputy Prime Minister for Innovation, Education, Science and Technology Development - Minister of Digital Transformation.

Both the Cabinet of Ministers (the Government) and the Verkhovna Rada (the Parliament) have Committees dealing with urban planning. Both can draft laws and submit those to the Parliament. On 23 December 2022, the Cabinet of Ministers established a new Government Committee for the Restoration of Ukraine, headed by the Minister of Community Development, Territories and Infrastructure. Additionally, from the Parliament side, there is the Committee of the Verkhovna Rada of Ukraine on the Organization of the State Power, Local Self-Government, Regional Development and Urban Planning. The Ministry of Restoration's Committee stands as a specialized task force, dedicated to implementing urban planning legislation, while the parliamentary committee stands as a permanent body primarily focused on legislative matters. Furthermore, there is the Coordination Council for Solving Problematic Issues in Urban Planning under the President of Ukraine. An advisory body to the President of Ukraine was established by Volodymyr Zelenskyy himself, with the aim of creating appropriate conditions for the realization of citizens’ right to housing, developing effective mechanisms for protecting the rights of investors and developers of residential construction projects and other urban planning objects³.

### From Soviet Legacy to Local Empowerment: The Transformative Journey of Ukrainian Urban Planning

In order to comprehend the current situation of Ukrainian settlements, it is essential to delve into the development of urban planning and the changing roles of cities over the past few

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2 Full name: Interdepartmental (or Interagency) Commission for the Consideration of Appeals and the Preparation of Proposals Concerning the Allocation and/or Transfer of Funds of the Recovery Fund fordestroyed Property and Infrastructure for Objects Subject to Restoration

decades. The declaration of Ukraine’s independence in 1991 was followed by mass privatization of public housing, of state owned enterprises, and of arable land; the latter, however, was subject to moratorium on selling between 2001 and 2020. The Soviet-style planning system was characterized by its top-down approach and a hierarchical structure of territorial plans with detailed land-use specifications. In the aftermath of the collapse of state socialism, the corresponding spatial plans remained largely unchanged; instead, new instruments were introduced to complement them and address emerging demands. Initially, the decentralization reform had minimal impact on planning. It is noteworthy that while the decentralization reform began in 2014, significant changes to planning legislation did not occur until 2020.

The decentralization reform in Ukraine, based on changes outlined in the Constitution of 2004, involved shifts away from reliance on state administrations towards locally elected councils. It encompassed territorial reform, municipal amalgamation, fiscal decentralization, and the transfer of properties and mandates for public services to the local level. However, the reform also reflected the need to rescale provision of basic services in line with observed depopulation, particularly in remote and sparsely populated areas, and the dilapidated state of its infrastructure, mostly laid out during the Soviet period. The reform thus incentivized local government consolidation (by voluntary municipal amalgamation) and corresponding concentration of service provision at the level of new amalgamated municipalities through a combination of subsidies and austerity measures. The reform thus incentivized local government consolidation (by voluntary municipal amalgamation) and corresponding concentration of service provision at the level of new amalgamated municipalities through a combination of subsidies and austerity measures. The reform thus incentivized local government consolidation (by voluntary municipal amalgamation) and corresponding concentration of service provision at the level of new amalgamated municipalities through a combination of subsidies and austerity measures. The reform thus incentivized local government consolidation (by voluntary municipal amalgamation) and corresponding concentration of service provision at the level of new amalgamated municipalities through a combination of subsidies and austerity measures. The reform thus incentivized local government consolidation (by voluntary municipal amalgamation) and corresponding concentration of service provision at the level of new amalgamated municipalities through a combination of subsidies and austerity measures. The reform thus incentivized local government consolidation (by voluntary municipal amalgamation) and corresponding concentration of service provision at the level of new amalgamated municipalities through a combination of subsidies and austerity measures.

While the most visible stage of the reform ended with wrapping up the municipal amalgamation and holding the local election in 2020 on a new territorial basis, the reform is de facto ongoing, with the current government voicing the intention to fix its outcomes at the level of the Constitution, as well as to pursue re-thinking the status and role of state administrations, something which has been a matter of debate since the start of the reform. The upcoming chapter will explain that despite the changes, the corresponding structure of planning documents is also still being devised and adapted, reflecting ongoing developments in the field.
Ukraine’s Urban Planning Legislation: A Framework in Crisis

The legal framework governing urban planning in Ukraine comprises the Law on Regulation of Urban-Planning Activity (2011) and the Law on the General Planning Scheme of the Territory of Ukraine (2002), which both establish guidelines for development at the national, regional, and local levels. Between 2015 and 2021, as a response to challenges posed by outdated Soviet planning techniques, there was a growing interest in exploring alternative urban planning methodologies. This shift was driven by a desire to prioritize integrated urban development over mere construction.

Two planning instruments are important at the local level with regard to spatial planning: the comprehensive spatial development plan for hromadas and the general plan (see figure 1). The comprehensive spatial development plan for hromadas was introduced in 2020 as a document for local self-governance. This plan serves dual purposes, acting as both spatial planning as well as land management documentation, both delineating planning organization, zoning, and decision-making structures. As such, the plan encompasses key principles and developmental objectives across various sectors, encompassing public services, infrastructure, transportation, public spaces, civil defense, cultural heritage, and environmental protection. Additionally, it delineates a detailed timeline for territorial development, providing a structured roadmap for progress and growth. While there is a mandate for all hromadas to draft these plans by 1 January 2025, meeting this deadline appears unlikely in the current situation.

At the local level, the long-term development decisions within settlements adhere to the general plans. Both plans incorporate legally binding zoning and land-use regulations. General plans are “nested” within comprehensive plans, since their expanse is defined by the settlement boundary, while comprehensive plans cover the whole territory of a municipality, including the open space in-between settlements. As mentioned, in Kharkiv and Mykolaiv, there exists no territorial distinction between hromada and the settlement, hence, both plans overlap completely. The two documents are accompanied by detailed plans. Essentially, these plans are designed to specifically outline the provisions of a comprehensive or general plan for particular plots. However, in practical terms, they function as important mechanisms facilitating development, particularly in the context of larger municipalities such as Kyiv or Kharkiv, being leveraged for modifying the provisions of general plans in the course of speculative development.

In recent years, there has been a noticeable rise in the interest surrounding soft (informal) spatial and strategic planning tools due to the deficiency of the old planning frameworks. Various international technical assistance projects facilitated the process of importing more advanced planning tools and approaches. This growing interest has also encompassed participatory planning approaches. The law has been updated to include a provision for an integrated development concept, serving as an informal documentation tool for strategic planning and forming the basis for the comprehensive plan. However, within professional circles and legislative frameworks, there is a tendency to categorize tools like integrated urban development concepts or concept master plans solely as informal and non-binding in terms of their effect on land-use, primarily for engaging the general public. This characterization inadvertently creates a perceived division between these tools and what is conventionally considered as the “real” spatial plans. However, this limitation also entails positive aspects: while public participation is emphasized in the use of these tools, it can simultaneously facilitate engagement and empowerment, potentially enhancing inclusivity within decision-making processes; whereas, public participation may be discouraged or disregarded in the context of binding, statutory plans.

In addition to spatial plans, local planning encompasses sector-specific strategies tailored to the economy. These plans, originating from regional and national levels, cascade downward to local contexts. Thus, exploring spatial planning alone is incomplete; it is equally important to address the regional development framework within local
settings. According to Ukrainian law⁴, hromadas are required to develop a **local development strategy** (see figure 1) that encompasses several key aspects. One important incentive for municipalities to have a strategy is that it qualifies them to apply for funds from the State Fund for Regional Development. This fund, along with the State Fund for Liquidation of the Effects of Military Aggression, is one of the few sources of funding for projects submitted by local governments. The local development strategy includes analysing trends and challenges in the socioeconomic development of regions, outlining state priorities in regional policy, defining territorial functionality categories, setting strategic objectives and approaches for regional development and collaboration between regions, specifying immediate goals to achieve strategic aims, detailing tasks, phases, and execution mechanisms. The local strategy is typically constructed on a basis of the plan for socioeconomic development, which comprises a summary of key socioeconomic development indicators.

### Key Legal Acts for Urban Reconstruction and Recovery and the Implications for Ukrainian Cities

Between May and July of 2022, the Verkhovna Rada, Ukraine’s Parliament, enacted a series of legislative changes focused on addressing the reconstruction and development of territories and communities affected by the consequences of war. The basis for this was laid out in the law № 2389-IX. Similar to the spatial planning and regional development frameworks described in the previous chapter, the new recovery policy stream cascades down from the national to the local level. At the local level the recovery policy was instrumentalized through a tool named **comprehensive recovery (or renewal) programmes** (see figure 1). It was put forward as part of amendments to the Law «On Regulation of Urban Development Activities» and provides for “the development of programmes to comprehensively restore the region and territory of the territorial community (its part)”⁵. Comprehensive recovery programmes are mandatory in cases where more than 15% of the built environment is damaged or a shift in population over 25% is observed. In other cases, they are optional. Hence, municipalities like Kharkiv and Mykolaiv that faced substantial ruination are required to have a comprehensive recovery programme. Comprehensive recovery programmes do not fall under urban planning documentation, yet they outline the primary spatial, urban planning, and socioeconomic priorities of the recovery policy. The document should be developed

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4 Available at https://zakon.rada.gov.ua/laws/show/156-19#Text
5 Available at https://zakon.rada.gov.ua/laws/show/2254-20

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![Figure 1. Planning instruments at the local level](image-url)
by the authorized body of urban planning and architecture of the relevant regional state administration. Resolution No. 1159 of 14 October 2022 defines the procedure for the formulation of comprehensive recovery programmes. Initially, it examines the region’s urban planning documents and development strategies to understand their relevance and implementation status. It then analyses the impacts of the war and assesses the incurred damages. The programme also entails evaluating the region’s resources to determine their potential for revitalization and preparing the territory accordingly. It involves assessing the feasibility of restoring infrastructure, including engineering, transport, energy, and water systems. Additionally, it includes proposing changes in territory use and devising plans for relocating production facilities to accommodate multiple communities within the region. A comprehensive approach is essential, aiming to balance spatial planning, environmental preservation, cultural heritage protection, and infrastructure development. The programme involves a preliminary financial assessment and identification of potential financing sources, facilitating effective implementation of the region’s recovery efforts.

At the local level, stakeholders are often experiencing uncertainty because the relationship between comprehensive recovery programmes and another key document, recovery and development plans (see figure 1), is not clear. The idea is that comprehensive recovery programmes serve as a basis for recovery and development plans. However, the lack of clear connection has resulted in challenges regarding understanding and coordination, potentially impacting the effective implementation of strategies for community recovery and development. Communities have yet to grasp the purpose of these documents; nevertheless, they are striving to meet the criteria required to apply for funding from different national-level funds. Law № 2389-IX also introduced a new classification of territories to be utilized for planning regional development. Namely, the territories are divided into four categories: “territories of recovery”, “magnets of growth”, “territories with special conditions for growth”, “territories of sustainable development”. This classification can, however, be criticized from the standpoint of consistency, since it brings together innate features of certain territories defined by long-term settlement patterns and geographic circumstances with the effects and damages of war. Depending on the classification of the municipality, different plans have to be developed. However, the absence of a unified legislative framework, and especially of clear implementation guidelines at the local level, presents a challenge in establishing a coherent system of planning documents for the country’s restoration. Municipalities are tasked with managing numerous plans within constraints related to capacity and resources, highlighting the need for a more efficient approach to facilitate effective planning and execution. Factors contributing to the complexity include the absence of established procedures for harmonizing the content of diverse plans (especially across different types like comprehensive plans and local development strategies), a shortage of administrative and financial resources for plan development, and varying degrees of incentive among hromadas for certain types of plans, such as recovery plans in less war-affected hromadas.

In light of this gap, the forthcoming chapter will provide a detailed exploration of the added value of the master plan development under the UN4UkrainianCities project.

### Laying the Groundwork: Conceptual Development for Master Plans in Kharkiv and Mykolaiv

The cities of Kharkiv and Mykolaiv in Ukraine are currently in the process of developing concept master plans. This initiative is part of the UN4UkrainianCities project led by UNECE. The concept master plans are long-term planning documents that will provide guidance for local spatial land use and socioeconomic development.

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6 Available at https://zakon.rada.gov.ua/laws/show/2389-20
The development of the concept master plans included a thorough stakeholder engagement process in both cities, featuring ongoing dialogue with the municipalities and extensive surveys, as well as capacity-building workshops for the local population. This approach aims to ensure comprehensive understanding of all perspectives and foster collaborative solutions rooted in local insights. Through a detailed process of analysis, specific pilot projects have been identified in alignment with each city’s developmental priorities. These pilot initiatives will be carefully developed to inform future urban regulations and to equip local professionals and industries for the cities’ future growth and development.

The concept master plans formulated within the UN4UkrainianCities project represent a collaborative effort involving international partners such as the Norman Foster Foundation and One Works Foundation, alongside local architects and experts. It is important to acknowledge that while these concept master plans offer valuable insights, they cannot replace the general plan required by Ukrainian legislation for the update of the general plan. This work can only be carried out by certified planning offices. Currently, there is no established legislative framework or procedure for approving these concept master plans in their current form. This is primarily due to their diverse nature, encompassing various planning aspects and including thematic spatial maps. Nevertheless, the project, in coordination with the city representatives, is aiming to reach official approval by the City Council, to safeguard the strategic principles established by the concept master plans.

The concept master plans under the UN4UkrainianCities project are intended to provide a visionary guidance for the amendment of the general plans of both cities (see figure 2). The cities have the option to incorporate these concept master plans into their terms of reference, offering detailed guidance to the Ukrainian planning office tasked with drafting the official documentation. In addition, the detailed concepts being prepared for the pilot projects in each city can be integrated into the requirements for the detailed plans that form part of the general plan. These pilot projects serve as practical demonstrations of the principles outlined in the concept master plans, allowing for real-world testing and refinement. By incorporating these detailed concepts into the requirements for the general plan, cities can ensure alignment between broader strategic objectives and specific, localized implementation strategies.
In addition, given the comprehensive nature of the concept master plans produced, their content can also serve as valuable inputs for the local strategy for regional development and for comprehensive recovery programmes. The insights and strategies outlined in the concept master plans can provide valuable direction for broader regional development initiatives, helping to align local urban planning efforts with larger-scale development goals. This approach ensures that the efforts invested in developing the concept master plans contributes to different plans and documents that the cities are required to draft according to the Ukrainian legislation. It cultivates synergies and coherence across various levels of planning and governance, while also ensuring the seamless integration of urban development initiatives across all scales.

Concerns Over the Centralized Nature of Reconstruction

During wartime, the role of the national government naturally expands due to various factors like the need for centralized decision-making and resource allocation. In Ukraine this is evident in initiatives like the consolidation of information on the DREAM platform. Additionally, efforts are being directed toward establishing strong national-level infrastructures for post-war recovery aid. The centralized nature of reconstruction has led to disputes between the national and local levels in Ukraine. Noteworthy are diplomatic efforts, such as those undertaken by the President’s Office, seeking to engage foreign states like Denmark in supporting specific regions such as Mykolaiv.

Ukraine’s institutional landscape has also seen a notable shift towards centralization through ministry consolidations. The merger between the Infrastructure Ministry and the Ministry for the Development of Communities and Territories (Minregion) has led to the formation of the restructured Ministry for Communities, Territories Development, and Infrastructure of Ukraine. Notably, while only a single branch from the former Minregion continued, the Ministry of Infrastructure remained largely unchanged. This reorganization reflects a strategic alignment in reconstruction priorities aligned towards the development of large infrastructure and construction projects.

As part of the introduction of martial law, the conditions for the activities of local governments have changed significantly. Giving extraordinary powers to the national government, martial law also empowers it to replace locally elected governments with military administrations based on the assessment of the security situation or due to other causes. The emergency of martial law also provides a premise for reviewing certain rights and liberties provided to the local governments through the decentralization reform. Combined with public pressure concerning the control of expenditures covering non-army or public safety related causes, martial law contributes to fragility of the local governments in their planning autonomy.

Another cause for disputes between the national and local levels in Ukraine in the context of centralization and urban planning is the recent debate over draft Law No. 5655. The draft law questions the local governments’ exclusive mandate over planning by artificially separating elaboration of spatial plans from their actual implementation. It was introduced as part of a national urban planning reform aimed at making the field more transparent and efficient. However, it faced significant opposition from the professional community and various independent actors across Ukraine. Critics argued that it represents another type of centralization where the national government enters into a coalition with the private sector to advocate their interests against the local governments. As the central government’s role becomes more prominent in post-war reconstruction efforts, there is growing concern about the potential impact on decentralization reforms and the role of local governments in Ukraine.

Recommendations

The current situation in Ukraine demands a coherent recovery framework that extends beyond mere physical reconstruction. The reconstruction efforts must be viewed as a transformative process that holds potential for positive change and development towards EU accession. The
recovery should also fully embrace the spatial component to avoid the risks of fragmentation of efforts or resources by looking at recovery initiatives as non-connected projects on isolated plots.

The legislative framework plays a pivotal role in the recovery process. Ukraine demonstrates a significant reform dynamic following the Russian aggression. As Ukraine moves forward with its EU accession efforts, it is important for them to review the existing legislative framework. The current legislative framework at the local level is overwhelmed by an excessive number of planning instruments, significantly complicating matters for local stakeholders who are contending with capacity gaps within municipal governments when tasked with producing these documents. In addition, there is an urgent need to revise and harmonize conflicting laws, specifically the ones governing urban development and state regional policy. The alignment of these laws is crucial for creating a coherent legal foundation that facilitates rather than hinders the recovery efforts.

One key consideration is the avoidance of a centralized approach to recovery and reconstruction. Such an approach risks overlooking the substantial potential that local communities possess. As the recovery unfolds, there is a call for the resumption of decentralization reforms. An effective strategy would be for the government to embrace a recovery and reconstruction approach grounded in local needs and capacities. By anchoring the reconstruction process in local government, the recovery becomes not just a national endeavour but a community-driven process that reflects the diverse needs of different regions.

Addressing the human resources challenge in various regions is identified as a critical aspect of the recovery. Building the institutional capacity of local authorities is essential for effective governance and service delivery. By enabling Ukraine's human capital and bolstering local capacities, the recovery process can achieve a more enduring impact.

In conclusion, Ukraine stands at a crucial juncture where recovery efforts must transcend the conventional notions of reconstruction. By adopting a decentralized, inclusive, and sustainable approach, Ukraine has the potential not only to recover from the current challenges but to emerge as a stronger and more resilient nation, capable of navigating the complexities of the future.