



# HOUSING AND PROPERTY RESTITUTION FOR REFUGEES AND DISPLACED PERSONS

Implementing the Pinheiro Principles  
in the Middle East and North Africa

*Advance Version*



Food and Agriculture  
Organization of the  
United Nations



UNITED NATIONS  
HUMAN RIGHTS  
OFFICE OF THE HIGH COMMISSIONER



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## Implementing the Pinheiro Principles in the Middle East and North Africa

***Advance Version***



Beirut, 2025

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Advance version (forthcoming UN eISBN: 978-92-1-106643-2)

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# PREFACE

The realization of the right to housing and property restitution for refugees and internally displaced persons is key to creating durable peace and for the realization of related human rights. Since the approval of the Principles on Housing and Property Restitution for Refugees and Displaced Persons in 2005, the Middle East and North Africa region has benefited from several promising practices, but it also has encountered many challenges to the realization of these rights.

The 2007 *Handbook on Housing and Property Restitution for Refugees and Displaced Persons – Implementing the “Pinheiro Principles”* has proven to be a valuable tool for practitioners worldwide in their work to secure a principled and informed resolution of housing and property restitution issues. This adaptation of the 2007 Handbook specifically for the Middle East and North Africa is intended to further the practical work taking place on the ground in the region by providing practical examples from the region and beyond of promising practices related to restitution.

While the examples herein are far from perfect and the changing situation in the countries and territories where they have been implemented continue to affect their sustainability, each one of them bears a unique value in terms of its contribution to further the aspirations set out in the Principles. The legal obligation of States – and the commitment of the international community at large – to ensure that refugees and internally displaced persons have restored to them housing, land or property that they were arbitrarily or unlawfully deprived remains. This Handbook is a tool to apply to this end.

The practical measures to support refugees and displaced persons to attain a durable solution that have been implemented by the partners and practitioners whose work has informed this Handbook is testimony to the commitment of the international community to fulfil their rights to restitution. I am thrilled to see this work taken forward is allowing the Principles to live on and serve the very people for which they were created.

A handwritten signature in blue ink, reading "Paulo S. Pinheiro".

**Paulo S. Pinheiro**

# ABOUT THE CONTRIBUTING ENTITIES

The **Food and Agriculture Agency of the United Nations (FAO)** has a long-standing mission to enhance access to land by the rural poor to reduce poverty and hunger and promote sustainable rural development. Rural landlessness is often the best predictor of poverty and hunger. Secure access to land provides a valuable safety net as a source of shelter, food and income in times of hardship, and a family's land can be the last available resort during a disaster. Providing secure access to land in countries emerging from violent conflict is fundamental to achieving sustainable peace. In partnership with international, governmental and civil society organizations, the FAO provides technical assistance through guidelines and projects to re-establish rural land tenure institutions and land administration systems in post-conflict settings.

The **International Organization for Migration (IOM)** is committed to addressing the critical challenges associated with displacement by focusing on ensuring access to housing, land and property rights for vulnerable populations in conflict and post-conflict settings. In line with its commitment to facilitate voluntary return and protection for refugees and internally displaced persons (IDPs), IOM actively engages in facilitating access to durable solutions. This includes creating conducive conditions for voluntary return, prioritizing access to housing, land and property for returnees. IOM plays a significant role in addressing challenges related to housing, land and property rights, collaborating with international, governmental and civil society organizations across various countries. This includes the provision of technical assistance through guidelines and projects aimed at strengthening land tenure institutions and land administration systems in post-conflict settings, contributing to the broader objective of achieving durable solutions. Recognizing the importance of restitution, IOM is involved in legal aid and support services, enhancing individuals' access to political, social, and economic rights, particularly in conflict-affected areas. Through its global presence, IOM contributes to data collection and promotes good practices in addressing housing, land and property issues, in line with the Pinheiro Principles. Its efforts to tackle housing, land and property challenges reflect a dedicated, collaborative approach, emphasizing technical assistance, facilitating access to rights and contributing towards achieving durable solutions for displaced populations.

The **Norwegian Refugee Council (NRC)** has been working on restitution of housing, land and property since the middle of the 1990s when the Information, Counselling and Legal Assistance (ICLA) programme was created. The objective of this programme is to facilitate durable solutions for refugees and displaced persons through the provision of information on situations in places of origin and legal aid to address discrimination and restriction in access to rights. Along with legal support to facilitate access to political, social and economic rights, the Council has provided legal aid on property restitution. Housing, land and property issues have become a major part of several ICLA activities. This work, which started first in the Balkans, has been extended to more than thirty territories, including, among them, Afghanistan, Bangladesh, Colombia, the Democratic Republic of the Congo, Ethiopia, Jordan, Iraq, Kenya, Lebanon, Libya, Mali, Myanmar, Mozambique, Nigeria, the Occupied Palestinian Territory, Somalia, South Sudan, Sudan, the Syrian Arab Republic, Uganda, Ukraine, Yemen and Venezuela.

The **Internal Displacement Monitoring Centre of the Norwegian Refugee Council** monitors conflict-induced internal displacement worldwide at the request of the United Nations. The Geneva-based centre runs an online database providing updated information on internal displacement in approximately 50 countries. On behalf of the Norwegian Refugee Council, the Internal Displacement Monitoring Centre monitors political and institutional developments related to housing, land and property issues and promotes good practices based on the Council's experience and in line with the Pinheiro Principles.



The mission of the [Office of the United Nations High Commissioner for Human Rights \(OHCHR\)](#) is to work for the protection of all human rights for all people; to help empower people to realize their rights; and to assist those responsible for upholding such rights in ensuring that they are implemented. The role of OHCHR in the present Handbook falls mainly within the scope of its work on the right to housing and related issues based on the inclusion of the right to adequate housing in the Universal Declaration of Human Rights, approved in 1948, and its reaffirmation and explicit recognition of a wide range of international human rights instruments as a component of the right to an adequate standard of living, and as part of the body of universally accepted and applicable international human rights law. OHCHR works with governments, legislatures, courts, national institutions, civil society, regional and international organizations and the United Nations system to develop and strengthen capacity, particularly at the national level, for the protection of human rights in accordance with international norms.

The [United Nations Human Settlements Programme \(UN-Habitat\)](#) promotes transformative change in cities and human settlements through knowledge, policy advice, technical assistance and collaborative action to leave no one and no place behind. Land and housing are at the heart of its mandate and work. In close collaboration with the partners of the Global Land Tool Network, the agency develops, disseminates and implements pro-poor and gender-responsive land tools, contributing to land reform, good land governance, inclusive land administration, sustainable land management and land sector coordination. It also develops capacities and provides knowledge and technical support to governments and other partners for the implementation of a wide range of land programmes, ranging from policy reform to the recordation and documentation of land rights of vulnerable communities, to the establishment of improved land administration systems. The work on housing revolves around advocacy, the development and dissemination of knowledge on adequate housing and the upgrading and transformation of slums. The work of UN-Habitat related to land and housing in a crisis context encompasses a range of activities, including, among them, co-leading the housing, land and property rights area of responsibility of the Global Protection Cluster.

# ABBREVIATIONS AND ACRONYMS

<b>ACHPR</b>	African Commission for Human and Peoples Rights
<b>BBAC</b>	Bank of Beirut and Arab Countries
<b>CRPC</b>	Commission on Real Property Claims (Bosnia and Herzegovina)
<b>ESCWA</b>	Economic and Social Commission for Western Asia
<b>FAO</b>	Food and Agriculture Organization of the United Nations
<b>G7</b>	Group of Seven (largest and advanced economies of the world: Canada, France, Germany, Italy, Japan, the United Kingdom and the United States).
<b>G7+</b>	A voluntary association of countries that are, or have been affected by conflict and are now in transition to the next stage of development: Afghanistan, Burundi, Central African Republic, Chad, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Guinea, Guinea-Bissau, Haiti, Liberia, Papua New Guinea, São Tome and Principe, Sierra Leone, Solomon Islands, Somalia, South Sudan, Timor-Leste, Togo and Yemen
<b>ICISS</b>	International Commission on Intervention and State Sovereignty
<b>ICLA</b>	Information, Counselling and Legal Assistance
<b>IDP</b>	Internally displaced person
<b>INGO</b>	International non-governmental organization
<b>IOM</b>	International Organization for Migration
<b>NGO</b>	Non-governmental organization
<b>NRC</b>	Norwegian Refugee Council
<b>OCHA</b>	Office for the Coordination of Humanitarian Affairs
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>STDM</b>	Social Tenure Domain Model
<b>UNDP</b>	United Nations Development Programme
<b>UN-Habitat</b>	United Nations Human Settlements Programme
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children's Fund
<b>UNRoD</b>	Office of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory
<b>UNRWA</b>	United Nation Refugee Works Agency for Palestine Refugees in the Near East
<b>UN-Women</b>	United Nations Entity for Gender Equality and the Empowerment of Women

# ABOUT THIS HANDBOOK

## Purpose and objective

This Handbook is intended to practically assist relevant national and international actors, and institutions to protect the housing, land and property rights of refugees and displaced persons and contribute towards the achievement of solutions through the application of the Principles on Housing and Property Restitution for Refugees and Displaced Persons (commonly referred to as the Pinheiro Principles) to various situations of displacement in the Middle East and North Africa region. An adaptation of the original handbook of 2007,<sup>1</sup> this regional edition aims to take stock of relevant tools developed since then, as well as key efforts to apply the Pinheiro Principles and secure restitution rights, focusing on refugees and displaced persons in the Middle East and North Africa region.

This Handbook also takes into account the evolution of global policies on displacement and new approaches resulting from the 2016 World Humanitarian Summit and the 2030 Agenda for Sustainable Development. Both recommend closer coordination, and improved continuity and consistency in the work of humanitarian, development and peacebuilding actors. This is informed by, among others, the realization that most forced displacement situations become protracted, requiring an approach that goes beyond addressing humanitarian needs. Protracted displacement may lead individuals and communities to prefer another durable solution than voluntary return. From an housing, land and property and human rights perspective, fostering the humanitarian, development and peace nexus requires a comprehensive approach that includes restitution, but also considers the structural issues that lead to conflict and displacement.

The intended users of this Handbook are staff of inter-governmental organizations and international and national non-governmental organizations (NGOs) that work in humanitarian, post-conflict, early recovery sectors, reconstruction or development fields involving refugees and displaced persons. The Handbook also targets government officials at municipalities, regional governments or at the national level, judges and other actors in the judiciary, staff of ministries dedicated to human rights, land and housing administration, and so on. Furthermore, refugees, displaced persons and other affected persons may be able to refer to this Handbook and use it as a tool to enable them to understand and access their rights and processes of housing, land and property restitution. In the aftermath of displacement, these various actors working towards claiming or protecting restitution rights are often confronted with numerous associated questions, complexities, obstacles and risks. While it is not possible to develop a “one-size-fits-all” approach to housing, land and property restitution given the diversity of the Middle East and North Africa region, this Handbook aims to assist relevant actors to manage challenges and make informed decisions about the most appropriate and effective approach to apply the Principles to their situation.<sup>2</sup>

<sup>1</sup> OHCHR and others, *Handbook on Housing and Property Restitution for Refugees and Displaced Persons – Implementing the “Pinheiro Principles”*, March 2007. Available at [www.ohchr.org/sites/default/files/Documents/Publications/pinheiro\\_principles.pdf](http://www.ohchr.org/sites/default/files/Documents/Publications/pinheiro_principles.pdf)

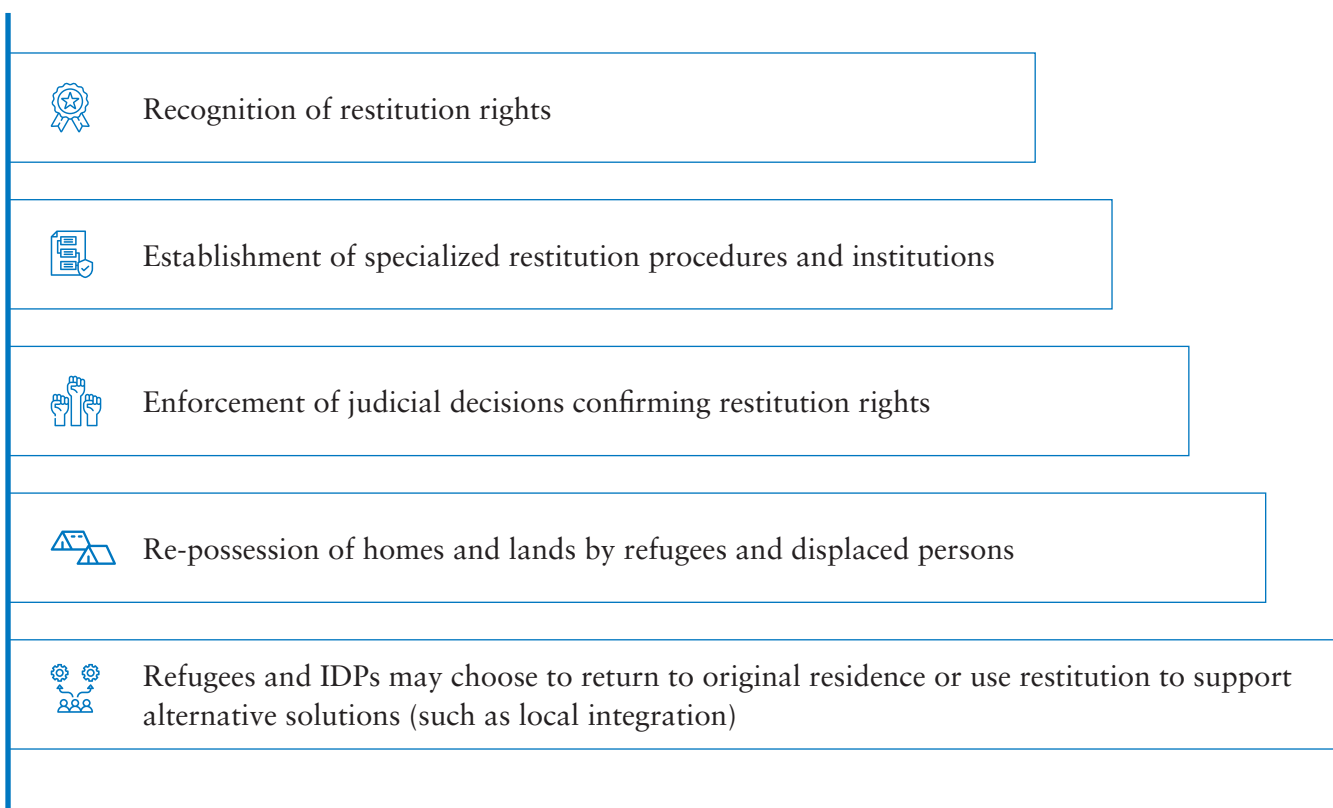
<sup>2</sup> See E/CN.4/Sub.2/2005/17/Add.1 11.

# Organization of the Handbook

The Handbook includes discussions on each of the 23 Pinheiro Principles in separate chapters. Each chapter begins with a brief description of the rationale and legal basis for including the principle in focus within the text (“**key issues**”). A section on the “**opportunities for applying the Pinheiro Principles**” follows, which explains how the contents of each Principle can be addressed and implemented. A section covering “**Frequently asked questions**” that restitution practitioners may be confronted with in applying the Principles is also provided, which intends to clarify the most frequent restitution challenges. The “opportunities for applying” and “Frequently asked questions” sections are concise, with only limited reference to legal terminology. Housing, land and property rights protection practitioners interested in accessing more detailed information about the legal basis of each of the Principles and how they may have already been applied in the field, are invited to review the “**useful guidance**” section, which concludes each chapter’s analysis of a Principle.

Handbook users need to bear in mind the very broad nature of the Principles and their comprehensive content. The objective of the Principles is to do the following: assert specific rights to housing; land and property restitution; reaffirm a range of related rights; outline necessary legal, policy, procedural and institutional arrangements to achieve restitution rights; and finally, outline practical roles for international organizations in securing these rights. While there are exceptions, generally these issues arise at different stages of the displacement cycle. For instance, the recognition of restitution rights necessarily precedes the establishment of specialized restitution procedures and institutions, just as questions related to the enforcement of judicial decisions confirming restitution rights necessarily precede the organized repossession of housing, land and property by refugees and displaced persons, who may then choose either to return to their original residence or to use restitution as a means for supporting another durable solution (such as local integration). Restitution is, therefore, very much a step-by-step process (see flow chart below).

## Key steps in the restitution of housing, land and property to



Handbook users should consider the text of the Principles as a unified whole and make every effort to ensure that the issues addressed within the text are treated seriously. They should familiarize themselves thoroughly with the human rights reaffirmed in the preamble of the Principles and [section I](#) (Principle 1), [section II](#) (Principle 2), [section III](#) (Principles 3-9) and [section IV](#) (Principle 10) to ensure that these rights are adequately promoted, respected and protected throughout all stages of the restitution process in a range of settings. This is applicable to advocacy efforts during peace negotiations to ensure the inclusion of restitution rights within any eventual agreement to the assertion of restitution rights within established restitution procedures on behalf of an individual refugee or displaced person. [Sections V, VI and VII](#) (Principles 11-23) provide guidance to Handbook users on the range of legal, policy, procedural and institutional implementation issues that occur during efforts to secure restitution rights. The analyses of Principles 11-22 are substantive in nature and designed to be user-friendly for those working on these issues.

Handbook users should be aware that the issues discussed in this publication are specific to housing, land and property restitution processes in the context of involuntary displacement caused by, among other factors, conflicts and disasters. While numerous housing, land and property rights protection concerns are common to all conflicts and disasters to a degree, in this Handbook, only the question of housing, land and property restitution rights of refugees and displaced persons as elaborated in the Principles are examined. Handbook users can find essential guidance on questions related to, for example, facilitating restitution and compensation, resolving housing, land and property disputes and dealing appropriately with secondary occupation of housing, land and property, the types of issues that require attention in the context of legal reform and an institutional framework that may work most effectively to secure restitution rights and related themes, such as transitional justice and reconstruction.

## Important practical considerations

As this Handbook is an adaptation of the 2007 original version, it is important to note that it consists of a combination of existing text and new or updated (region-specific) information, examples and resources. While the text of the 2007 Handbook was not referenced, it was deemed important to provide users of this Handbook with the sources of the additional information. Accordingly, this regional edition contains footnotes for the new text, while the original sections remain unsourced.

As noted, this regional Handbook, similar to the 2007 version, is organized on a principle-by-principle basis. Each chapter contains short, practical and mostly regional examples of how certain issues (such as documentation, secondary occupation and accessibility) have been addressed in past or ongoing restitution efforts and descriptions of experiences that may be useful to refer to in developing responses to new restitution questions. More detailed examples are placed in the boxes, which Handbook users may wish to delve into further. As a result of this “thematic” approach, the Handbook does not provide information on the examples from beginning to end.

Numerous efforts to protect the right to restitution have taken place over the past three decades. This Handbook aims to refer to the most insightful examples, irrespective of the time they were implemented. As a result, Handbook users may read about, for instance, efforts in 2004 and 2006 to address pre-2003 restitution claims in Iraq, while efforts to compensate owners for damage to housing, land and property almost two decades later are also discussed. Similarly, restitution efforts that may have been significantly changed or even replaced at the time of drafting this Handbook may still be included if deemed insightful for the issue in question.

# INTRODUCTION

The scale of displacement in the world today is unprecedented. It has occurred in a variety of contexts, including, among them, large-scale violence, forcible population transfers, occupations, civil conflicts, interventions by other conventional and non-conventional armed forces of state and non-state actors and disasters and environmental degradation, including as a result of climate change. According to the United Nations High Commissioner for Refugees (UNHCR), 108.4 million people worldwide were forcibly displaced at the end of 2022 because of persecution, conflict, violence, human rights violations and events seriously disturbing public order.<sup>3</sup>

Over the past two decades, the concentration of refugees (including those falling under the mandate of the United Nations Relief and Work Agency for Palestinian Refugees (UNRWA), internally displaced persons (IDPs) and asylum seekers in the Middle East and North Africa region has been one of the largest in the world. The most recent example of displacement in the region occurred in the context of the Israel/Gaza crisis that commenced in October 2023. More than 1.9 million of the 2.3 million residents of the Gaza strip had been displaced during the hostilities by mid-November 2023,<sup>4</sup> adding to the 5.8 million Palestinian refugees recorded by the end of 2022. At that time there were also more than 6.5 million Syrian refugees, while another 6.8 million Syrians remained displaced within the country. The number of IDPs in Yemen totalled 4.8 million. The recent crisis in Sudan has caused nearly 900,000 people to flee to safety across its borders while 3.6 million people are internally displaced. Türkiye hosts the largest number of refugees in the world (more than 3.5 million), followed by the Islamic Republic of Iran, which hosts more than 3.4 million refugees. One in seven people is a refugee in Lebanon, which hosts more than 800,000 refugees.<sup>5</sup> Millions of people wish to return to the housing, land and property that they were forced to abandon. In addition to possible security challenges, they face immense challenges in trying to repossess their housing, land and property, which, in turn, reduces the prospects for stability and peace in their country and in the region as well as achievement of solutions to displacement.

Restitution is a legal remedy that supports refugees and displaced persons to attain a durable solution to their displacement through voluntary return, resettlement or local integration. Given the number of refugees and displaced persons in the Middle East and North Africa region, the potential for housing, land and property restitution claims is enormous. Interpreting, applying and implementing the various universal norms and principles is, therefore, a daunting challenge for any person or organization working towards securing the right to restitution of refugees and displaced persons in the Middle East and North Africa region. Moreover, it is necessary to ensure that responses are tailored to local conditions and contexts of countries of origin, which will each present different opportunities and constraints for the achievement of durable solutions and restitution.

Since their inception in 2005, the Pinheiro Principles have been applied in a variety of displacement contexts across the globe. This application has led to the recognition that regional approaches may be beneficial to ensure that the needs and views of refugees, displaced persons and their hosts as well as other relevant dynamics that are unique to specific parts of the world are adequately considered in the development of responses. Regional dimensions were reflected in the responses to emblematic cases ranging from Europe (the Balkans and Ukraine) and the Great Lakes Region of sub-Saharan Africa to Asia and the Middle East.

The relevant specificities of the Middle East and North Africa region were adapted in this Handbook from the 2007 publication of the inter-agency Handbook on the Pinheiro Principles. This Handbook reflects on several important developments and efforts of experts and organizations concerned with protecting restitution rights in the Middle East and North Africa region following the inception of the Principles in 2005. It seeks to place the Principles in the context of relevant international and regional instruments adopted to date and shares examples that can assist future interventions aimed at securing the right to restitution in the region.

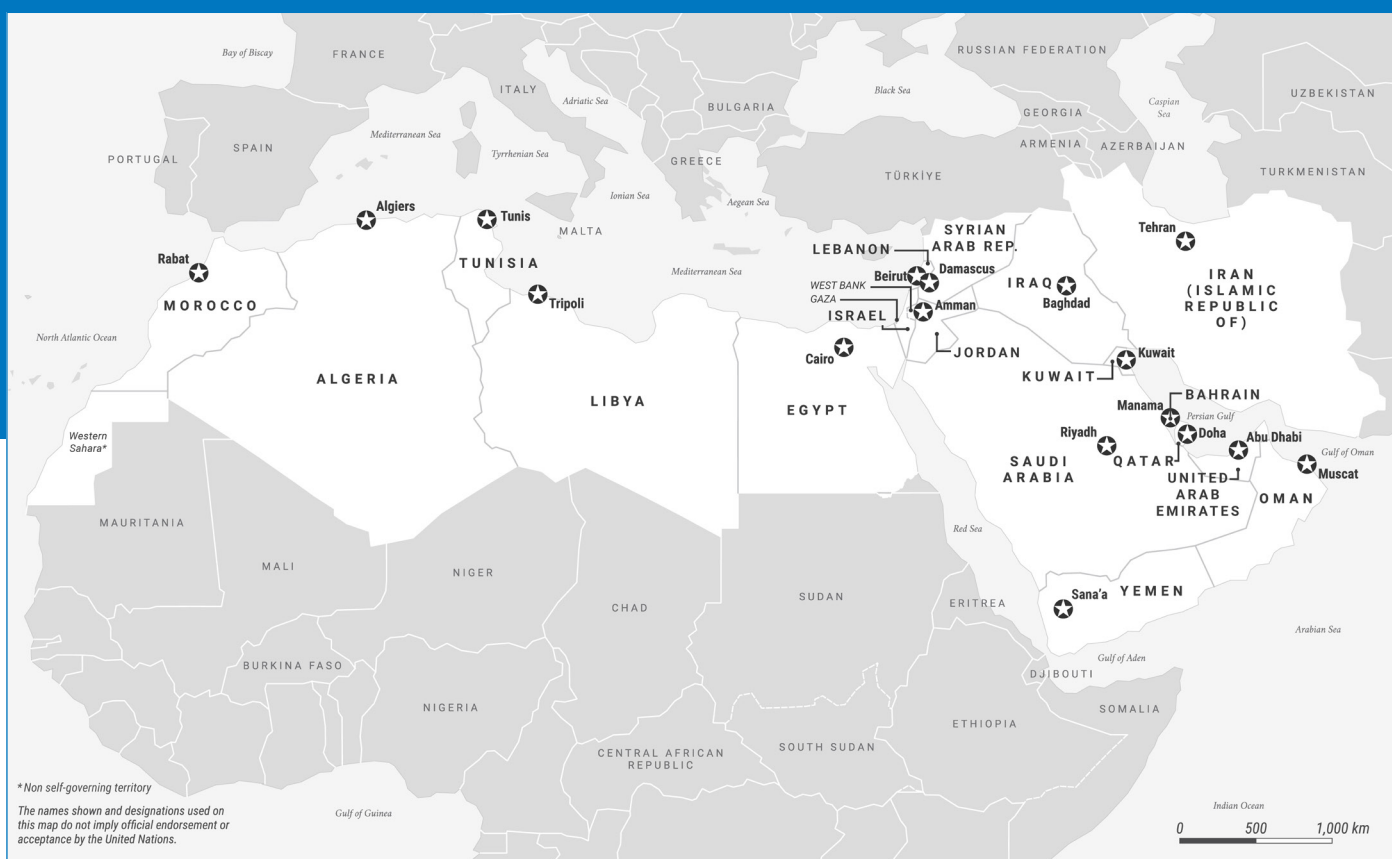
<sup>3</sup> UNHCR, "Global trends report 2022", June 2023. Available at [www.unhcr.org/global-trends-report-2022](http://www.unhcr.org/global-trends-report-2022)

<sup>4</sup> UNRWA, "UNRWA situation and response to the escalation in the Gaza strip, Situation Report No. 50 on the Situation in the Gaza strip", 12 December 2023. Available at [www.unrwa.org/resources/reports/unrwa-situation-report-50-situation-gaza-strip-and-west-bank-including-east-jerusalem](http://www.unrwa.org/resources/reports/unrwa-situation-report-50-situation-gaza-strip-and-west-bank-including-east-jerusalem)

<sup>5</sup> UNHCR, *Global Trends Report 2022*.

For the purposes of this Handbook, the Middle East and North Africa region includes Algeria, Bahrain, Egypt, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, Tunisia, the United Arab Emirates, Yemen and Occupied Palestinian Territory.

## Countries and territories in the Middle East and North Africa region



Created: 22 April 2024

Source: OCHA, OSM Contact: [ohchr-imsupport@un.org](mailto:ohchr-imsupport@un.org)

# Restitution for refugees and displaced persons in the Middle East and North Africa region



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The Middle East and North Africa region<sup>6</sup> was one of the first to recognize the right to restitution of refugees and displaced persons and communities. This right and corresponding commitments of the State were enshrined in the Cyrus Cylinder in the sixth Century B.C.E.,<sup>7</sup> which is considered one of the world's first human rights instruments and the source of the legal right of return. More recently, numerous international, regional and national laws, policies and other instruments to redress the housing, land and property rights violations resulting from the various complex conflicts and aforementioned displacement have been developed and implemented in the region. Some of these efforts have been more successful than others, but they all, nevertheless, provide insightful examples of how the region attempts to protect the rights that it enshrined a long time ago.

For instance, the United Nations Conciliation Commission for Palestine (1949–1964) was, among others, dedicated to the restoration of housing, land and property rights of Palestinians forced to seek safety across international borders as a result of the 1948 war.<sup>8</sup> Although the Oslo Accords between Israel and the Palestinian Liberation Organization were drafted 15 years before the Pinheiro Principles were adopted, they also reflected the recognition of housing, land and property rights, albeit only as a subject of “final status” arrangements that have not yet been agreed upon.<sup>9</sup>

In another regional case, the United Nations Compensation Commission completed its task of awarding compensation for losses incurred during the invasion of Iraq and occupation of Kuwait in 1990/1991.<sup>10</sup> Between 1991 and

<sup>6</sup> What is referred to as Middle East and North Africa for the purposes of this Handbook does not claim to define in any way this diverse region.

<sup>7</sup> United Nations Dag Hammarskjöld Library, “the “Cylinder of Cyrus” a.k.a. “Edict of Cyrus”. Available at <https://ask.un.org/faq/194027>

<sup>8</sup> See General Assembly resolution 194 (III) of December 1948, para. 11.

<sup>9</sup> See General Assembly resolution 14/186.

<sup>10</sup> Veijo Heiskanen, “The United Nations Compensation Commission”, *Collected Courses of the Hague*, vol. 296 (2020); see also for procedural approaches to housing, land and property rights remedy mechanisms Veijo Heiskanen, “Innovations in mass claims dispute resolution, speeding the resolution of mass claims using information technology”, *Dispute Resolution Journal*, vol. 58. (August-October 2003), pp. 65–69.



2005, the Commission awarded a total compensation of \$52.4 billion to approximately 1.5 million successful claimants. Housing, land and property claims were paid through 17 States and two United Nations agencies.<sup>11</sup>

In 1993, the Government of Lebanon established the Ministry of the Displaced and the Central Fund of the Displaced to improve the social and economic conditions for some 450,000 Lebanese (14 per cent of the population), who have been displaced during and after the civil war (1975–1990). These arrangements followed the 1989 Taif Agreement<sup>12</sup> and sought to finance housing and rebuilding projects, support reconciliation initiatives as well as help displaced persons return to their abandoned houses and villages in all Lebanese regions. The efforts are not yet completed for various reasons, including, among them, coordination challenges and alleged mismanagement.<sup>13</sup>

In 2006, the General Assembly established the Office of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory (UNRoD). Between 2008 and 2020, UNRoD carried out its documentation mandate in the nine affected governorates, Tubas, Janin, Tulkarm, Qalqilyah, Salfit, Hebron, Ramallah, Bethlehem and Jerusalem.<sup>14</sup> By 31 August 2023, the Commission had collected 73,576 claim forms for registration of damage and more than 1 million supporting documents, which have been submitted to the office of UNRoD in Vienna. As of 16 May 2023, the Board of UNRoD has reviewed and decided on 41,022 of the collected claims.<sup>15</sup> UNRoD continues to conduct a range of international studies and peace initiatives on needed housing, land and property restitution for Palestinians in and from Jerusalem.<sup>16</sup>

Following the series of protests and demonstrations across the Middle East and North Africa that commenced in 2010, known as the “Arab Spring”, in Yemen in 2011, the

country commenced a transition process with the assistance of the international community, most notably the Gulf Cooperation Council. Restitution or compensation for all housing, land and property confiscated in past decades was raised as a priority by communities in southern Yemen during the preparatory activities for a national dialogue as part of the transition initiative. A Presidential Decree subsequently created the “Commission to Consider and Address Land Issues” in January 2013. It was established in the southern city of Aden as a confidence-building measure to address the root causes of southern grievances.

The Land Commission started its work on 10 March 2013. By August 2014, it had received more than 100,000 claims from individuals maintaining that their lands and properties were illegally confiscated by the Government following the 1994 war. In late 2014, renewed conflict in the country disrupted the process.<sup>17</sup>

In addition to illustrating the variety of responses that have been developed in the Middle East and North Africa region, these examples also provide insight into the complex challenges involved in the restitution of housing, land and property. Post-conflict reconstruction and transitional justice processes in the region face a daunting challenge, owing to the numbers of cases involved and the scale of the consequences they seek to address. Often, there are many unresolved housing, land and property rights issues stemming from earlier conflicts, displacement crises and occupation. The region also is experiencing the exacerbation of pre-existing housing, land and property disputes and numerous new housing, land and property disputes, which are brought before courts and alternative dispute resolution mechanisms and/or informal mechanisms. These structures’ capacity may have been significantly weakened as a result of war and violence and they may also lack the appropriate mandate to resolve disputes in such contexts.

<sup>11</sup> See S/AC.26/2007/2.

<sup>12</sup> Also known as the National Reconciliation Accord or Document of National Accord, reached at Taif, Saudi Arabia to provide “the basis for the ending of the civil war and the return to political normalcy in Lebanon.” While acknowledging the right of return, it defers the details. Section IV reads: “The problem of the Lebanese displaced shall be solved radically, and the right of every Lebanese displaced since 1975 to return to the place from which he was evicted shall be acknowledged. Legislation to guarantee this right and insure the means of reconstruction shall be issued.” Peace Accords Matrix (University of Notre Dame). Available at [www.presidency.gov.lb/Arabic/LebaneseSystem/Documents/TaifAgreementEn.pdf](http://www.presidency.gov.lb/Arabic/LebaneseSystem/Documents/TaifAgreementEn.pdf)

<sup>13</sup> Reinoud Leenders, *Spoils of Truce: Corruption and State-Building in Postwar Lebanon* (Ithaca NY, Cornell University Press, 2012).

<sup>14</sup> Progress Report by UNRoD, 24 July 2020 (A/ES-10/839).

<sup>15</sup> UNRoD, “About UNRoD”, (n.d.). Available at [www.unrod.org](http://www.unrod.org)

<sup>16</sup> Progress Report by UNRoD (A/ES-10/839); and Rex Brynen and Roula El-Rifai (eds.), *Compensation to Palestinian Refugees and the Search for Palestinian-Israeli Peace* (London, Pluto Press, 2013).

<sup>17</sup> Jon Unruh, “Mass claims in land and property following the Arab Spring: lessons from Yemen”, *Stability: International Journal of Security and Development*, vol. 5, No. 1 (2016), p. 6; and A/HRC/27/44, p. 7.

## Challenges to HLP Restitution

- Widespread destruction, looting and confiscation of housing, land and property belonging to refugees and displaced persons;
- Systematic illegal rental and/or sale of confiscated housing, land and property often without sales contracts or registry papers, or with forged documentation;
- Coercive environments that use population transfers and contracts to sell or exchange housing, land and property made under force, threat or duress for the purpose or effect of displacement;
- High prevalence of secondary occupation;
- Widespread destruction of the commons, natural and cultural heritage, including religious sites;
- Presence of land mines, booby traps and improvised explosive devices;
- Lack of physical access to sites in the field, owing to a breakdown of security;
- Multiplicity of statutory and customary tenure systems in the region;
- Numerous problems with administrative records and public infrastructure, including targeted destruction and appropriation of public infrastructure;
- Pre-existing gender discriminatory practices are often exacerbated during conflict, disaster and displacement and hinder women's enjoyment of housing, land and property restitution rights;
- Widespread loss or confiscation of housing, land and property and civil documentation;
- Housing, land and property documentation and registers may be intentionally and systematically destroyed;
- Lack of formal housing, land and property and related documentation prior to the eviction or displacement resulting from informal tenure situations or limited means to obtain formal documentation;
- Insufficient or weakened institutional capacity at the central and local level of government to respect, protect or fulfil housing, land and property rights;
- Limited access to information;
- Housing, land and property claims are further hampered by the lack of resources to pay out compensation packages;
- Expropriation without adequate compensation under the guise of reconstruction or urban renewal resulting in new displacement or obstruction to the return of expropriated refugees and IDPs.

In many situations, dispossession and/or destruction of housing, land and property has been conducted on the basis of political, religious or ethnic affiliation, which, in turn, establishes new or deepened lines of resentment, fragmentation and loss of social cohesion among the population and has long-lasting effects on the stability of countries. Minorities and/or Indigenous Peoples have also often been targeted. As displacement becomes protracted, there has, in some cases, also been increasing levels of xenophobia and hostility from the host community, particularly in the absence of proper integration and social cohesion programmes. Chronic or endemic shortages of

adequate housing (including basic services) and suitable land, pre-existing and/or coexisting with displacement can further exacerbate tensions. Reconstruction of housing and infrastructure after a conflict by the State and/or private business actors, possibly implemented in a discriminatory manner, has and can also contribute to the dispossession of housing, land and property assets and create further obstacles to achieving solutions to displacement. These issues illustrate why addressing housing, land and property rights protection challenges is critical for any humanitarian, development, peacebuilding or transitional justice programme.



# SECTION I

## SCOPE AND APPLICATION

### PRINCIPLE 1: Scope and application

- 1.1 The Principles on housing and property restitution for refugees and displaced persons articulated herein are designed to assist all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence.
- 1.2 The Principles on housing and property restitution for refugees and displaced persons apply equally to all refugees, internally displaced persons and to other similarly situated displaced persons who fled across national borders but who may not meet the legal definition of refugee (hereinafter “refugees and displaced persons”) who were arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which displacement originally occurred.

## Key Issues

The Pinheiro Principles have a broad scope and extend guidance to local, national, regional and international actors on how to adequately address the legal and technical issues linked to the housing, land and property restitution rights of refugees and displaced persons.

The Principles are inclusive in nature. In recognizing the housing, land and property restitution rights of all “refugees and displaced persons”, the Principles do not distinguish between categories of displaced persons in terms of defining their rights. This is an important expansion of the language frequently used to describe displacement, which often refers more restrictively to “refugees and internally displaced persons”. The simplified language of “refugees and displaced persons” is intended to be more inclusive by conferring restitution rights to a broader group of rights holders, namely refugees, IDPs (which includes those displaced by disasters) and displaced persons who flee across national borders but are not officially recognized as refugees. The latter category is relevant when governments insist on referring to asylum seekers as “displaced”, to avoid their obligations as mandated by international law when the “displaced” are recognized as refugees. All persons classified in the three categories are potential victims of a reparable violation.

The application of the Principles is not exclusive to large-scale dispossessions or displacements. The Principles are applicable to all cases of involuntary displacement resulting from international and internal armed conflict and gross human rights violations, such as “ethnic cleansing”. Displacement and housing, land and property dispossession can also result from development projects, forced evictions, and natural and human-made hazards or disasters, which invoke the same housing, land and property restitution entitlements for those affected.<sup>18</sup> Ultimately, the Principles take the perspective that neither war, human rights abuses, development projects nor disasters are justifiable grounds upon which to legitimize the arbitrary or unlawful acquisition, expropriation or destruction of homes and lands over which refugees and displaced persons continue to retain rights. Grounded firmly in existing international law, policy and best practices, the Principles recognize the fundamental nature of housing, land and property restitution as a key concern of States and the international community and as an essential feature of long-lasting peace and sustainable development.

## Opportunities for applying Principle 1

**Shaping the content of peace agreements** – to illustrate the growing realization that protecting housing, land and property restitution rights and addressing housing, land and property disputes are crucial to sustainable peace, numerous peace agreements have included provisions on these issues. The 2006 Darfur Peace Agreement, for instance, affirmed that “[d]isplaced persons have the right to restitution of their property, whether they choose to return to their places of origin or not, or to be compensated adequately for the loss of their property, in accordance with international principles.”<sup>19</sup> The 2000 Arusha Peace and Reconciliation Agreement for Burundi, and in particular its Protocol IV, provided for a national commission to facilitate the return of the refugees and displaced persons “as well as the restitution of property, including land, belonging to such persons”, while addressing housing, land and property-rights related issues.<sup>20</sup> These examples provide negotiators wishing to support the inclusion of housing, land and property restitution into peace agreements with precedents to support their position (see box 15 for more information).

**Transitional justice** – In the context of political and societal change and transition, housing, land and property restitution has historically been an important element of judicial and administrative transitional justice processes, which may include setting up trials, truth commissions or national dialogues (and follow-up mechanisms), the adoption of laws on amnesty and payment of compensation (directly or indirectly) to victims. Regardless of the selected approach, most transitional justice processes focus on at least two closely linked and interdependent objectives, the reparation of victims and national reconciliation.

By stimulating the debate on housing, land and property rights issues and contributing to a shared acknowledgement of past violations, transitional justice processes can facilitate the acceptance of restitution and compensation laws and institutions. Transitional justice processes are long-term endeavours that often necessitate institutional reform and, most importantly, agreement among the various parties involved, which is often challenging to obtain.

The need for and potential of housing, land and property rights protection as part of transitional justice processes in the Middle East and North Africa region is considerable, however, notably, several countries have

<sup>18</sup> Simon Behrman and Avidan Kent (eds.), *Climate Refugees: Beyond the Legal Impasse* (Cambridge, United Kingdom, Cambridge University Press, 2022); and Khaled Hassine, *Handling Climate Displacement* (Cambridge, United Kingdom, Cambridge University Press, 2019).

<sup>19</sup> The Darfur Peace Agreement, clause 194, p. 37.

<sup>20</sup> The Arusha Peace and Reconciliation Agreement for Burundi, article 18(3), p. 47.

already embarked on such processes in recent years. For example, the Moroccan Equity and Reconciliation Commission facilitated a process from 2004 to 2006 that recognized past injustices and rights violations, and provided reparation. Approximately 20,000 cases were submitted to the Commission during this two-year period. Regarding housing, land and property restitution, the Commission acknowledged that many victims struggled to meet their basic needs because of State actions and

consequently, included socioeconomic reparations in its work. Reparations consisted of financial compensation and social reinsertion, meaning the restoration of employment and property.<sup>21</sup> Another example from the region involved Libya, which adopted a transitional justice law in 2013 (see box 1). Also of note, in Yemen, a dedicated mechanism to address grievances around land was set up in 2013 as a key result of the preparations for a national dialogue (see box 2).

### Box 1: Transitional justice legislation in Libya

In Libya, the Transitional Justice Law 29/2013 was adopted in 2013 without fully operationalizing the associated Fact-finding and Reconciliation Committee. The Law focuses primarily on violent crimes against physical and natural persons, but article 28 defers the issue of housing, land and property violations and restitution to subsequent legislation.<sup>22</sup> The [draft] Libyan Constitution [of 29 July 2017] provides for transitional justice measures in chapter eleven on transitional measures. Article 181 guarantees that “the State is committed to applying transitional justice measures and promulgates a law regulating truth seeking, reparation, accountability, accountancy and examination of institutions”. Apart from defining the scope of transitional justice functions, the question of the temporal scope, namely the start date of cases to consider has been deferred to future transitional justice processes.<sup>23</sup>

### Box 2: Transitional justice efforts in Yemen in 2013 and 2014<sup>24</sup>

Following the Arab Spring unrest in 2011 and the transition initiative of the Gulf Cooperation Council, Yemen embarked on an ambitious transitional justice process to deal with issues arising from decades of housing, land and property rights violations involving the nationalization of properties, internal strife and land grabbing in the context of corruption and weak rule of law. The National Dialogue Conference kickstarted the process, which took place between 18 March 2013 and 24 January 2014. A key issue on the agenda was the “Commission to Consider and Address Land Issues”, which was created by Presidential Decree in January 2013. The Commission was based in Aden with the mandate “to address issues related to land ... in the Southern Governorates in order to complete the National Dialogue and National Reconciliation and as required by the Public Interest...”

The Land Commission, consisting of five judges, started its work on 10 March 2013 and established seven field offices across south Yemen. By 10 May 2013, the Commission had received 90,000 claims. Claim intakes were reopened the following year between 1 January and 20 March 2014 and the volume of claims increased dramatically. Unfortunately, several challenges hindered the work of the Land Commission, including, among them, lack of evidence from formal and customary land tenure systems and literacy and communication problems on the part of the claimants; no land registry, effective deeds system or cadastre; political opposition from those in illegal possession of those lands; and further conflict throughout Yemen from mid-2015. The conflict disrupted the functioning of the Land Commission as well as the institutions that managed housing, land and property, with whom the Commission needed to cooperate. Despite ongoing conflict, those transitional-justice mechanisms and the discussion that preceded their establishment constitute a useful basis to start from when conditions for peace and recovery reappear.

<sup>21</sup> Caroline Lavoie, “Morocco’s equity and reconciliation commission and restoration of dignity”; and International Human Rights Internship Program, Working Paper Series, vol 6, No. 1 (McGill Centre for Human Rights and Legal Pluralism, Fall 2018).

<sup>22</sup> Libya, Law No. 29 on transitional justice of 2 December 2013.

<sup>23</sup> Libya, draft constitution of Libya version dated 29 July 2017.

<sup>24</sup> See A/HRC/27/44; and Jon Unruh, “The role of land grievance and identity in Yemen’s Arab Spring: prospects for restitution” (2018). Available at [www.researchgate.net/publication/327040722\\_The\\_Role\\_of\\_Land\\_Grievance\\_and\\_Identity\\_in\\_Yemen%27s\\_Arab\\_Spring\\_Prospect\\_for\\_Restitution](http://www.researchgate.net/publication/327040722_The_Role_of_Land_Grievance_and_Identity_in_Yemen%27s_Arab_Spring_Prospect_for_Restitution)

**Peacekeeping operations** – Several peace operations have been involved directly in housing, land and property restitution efforts. Examples include both the United Nations and African Union peacekeeping operations. For example, the United Nations Interim Administration Mission in Kosovo<sup>25</sup> established and managed the Housing and Property Directorate and the Housing and Property Claims Commission. A land and property unit within the United Nations Transitional Authority in East Timor developed detailed proposals for institutionally addressing restitution questions. More on this is elaborated under Principle 22.

**Natural and human-made disasters** – Natural and human-made disasters, such as earthquakes, tsunamis, storms and floods, and development projects, such as dams, often result in large-scale displacement of people from their housing, land and property. For example, the earthquakes that struck south-western Türkiye and north-western Syrian Arab Republic in February 2023 caused a massive loss of life and enormous property damage. In Türkiye, more than 55,000 people were killed and 107,000 people were injured. More than 160,000 buildings, containing 520,000 apartments are estimated to have been destroyed. In the Syrian Arab Republic, at least 10,600 buildings were completely or partially destroyed,<sup>26</sup> and more than 7,000 people were killed.<sup>27</sup> The Islamic Republic of Iran has been experiencing severe floodings in recent years, most notable of which were the 2019 floods. Ninety per cent of the country, including 2,000 towns and cities were affected, particularly in the provinces of Golestan, Khuzestan and Lorestan. Mass evacuations were ordered, with many people sent to temporary shelters, amounting to approximately 500,000 new displacements countrywide.<sup>28</sup>

In Türkiye, up to 100,000 persons are estimated to have been displaced and affected by the construction of the Ilisu Dam.<sup>29</sup> Another regional example of a human-made

disaster with disastrous housing, land and property rights implications was the blast in Beirut in August 2020, which killed 218 persons and affected more than 200,000 houses. The blast destroyed housing within the immediate vicinity in the Beirut port area, resulting in the displacement of thousands of residents.<sup>30</sup>

It should be noted that in some settings, responses to such disasters may arbitrarily and/or unlawfully prevent the displaced from returning to their homes. The Pinheiro Principles, which covers *all* displaced persons, including those forced to flee their homes due to disaster, can serve as a reference to international standards supporting the rights of disaster-affected populations to return to and recover their former housing, land and property should they so wish.<sup>31</sup>

**Complex emergencies** – A complex emergency is a major humanitarian crisis that is often the result of a combination of political instability, conflict and violence, social inequality, poverty and environmental degradation. Such a situation may involve several waves of displacement over time with multiple causes. Many complex emergency situations have occurred in the Middle East and North Africa region. For instance, following the uprising against the Government of Muammar Gaddafi in 2011, civilians in Libya continue to suffer because of conflict, instability, political fragmentation and an economic crisis. In September 2023, the situation in the country was further compounded by floods, which led to the displacement of more than 44,000 people and damaged or destroyed more than 10,000 buildings.<sup>32</sup> In Yemen, in addition to renewed conflict following decades of dispossession and displacement, the country simultaneously faced public health crises and hovered on the brink of famine. By the end of December 2023, more than 21 million Yemenis (two thirds of the population) were dependent on humanitarian assistance, including 4.5 million IDPs, and 71,000 refugees and asylum-seekers.<sup>33</sup> Many refugees and displaced persons remain unable to return to their original

<sup>25</sup> All references to Kosovo should be understood to be in the context of United Nations Security Council resolution 1244 (1999).

<sup>26</sup> Centre for Disaster Philanthropy, 2023 Turkey/Syria Earthquake, updated 23 October 2023. Available at <https://disasterphilanthropy.org/disasters/2023-turkey-syria-earthquake/#:~:text=At%20least%2010%2C600%20buildings%20were,buildings%20were%20cl>

<sup>27</sup> IMC, Syria/Turkey Earthquakes Situation Report #7, 8 March 2023. Available at <https://reliefweb.int/report/syrian-arab-republic/syriaturkey-earthquakes-situation-report-7-march-8-2023#:~:text=the%20death%20toll%20from%20earthquakes,turkey%20and%207%2c259%20in%20syria>

<sup>28</sup> Internal Displacement Monitoring Center, "Mid-year figures: internal displacement from January to June 2019", 12 September 2019. Available at [www.internal-displacement.org/publications/internal-displacement-mid-year-figures-january-june-2019](http://www.internal-displacement.org/publications/internal-displacement-mid-year-figures-january-june-2019)

<sup>29</sup> Letter to Türkiye from the Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; and the Special Rapporteur on the human rights of internally displaced persons; and the Special Rapporteur on minority issues, 23 November 2018. Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24104>

<sup>30</sup> Mona Fawaz and others, "Housing, land and property in Beirut, in the light of the port blast", Norwegian Refugee Council, August 2020. Available at [www.nrc.no/globalassets/pdf/reports/hlp-in-beirut/hlp-in-beirut-in-the-light-of-the-port-blast-executive-summary.pdf](http://www.nrc.no/globalassets/pdf/reports/hlp-in-beirut/hlp-in-beirut-in-the-light-of-the-port-blast-executive-summary.pdf)

<sup>31</sup> Hassine, Handling Climate Displacement.

<sup>32</sup> OCHA, "Libya: Flood Response Humanitarian Update (as of 28 November 2023)", 2 December 2023. Available at [www.unocha.org/publications/report/libya/libya-flood-response-humanitarian-update-28-november-2023-enar](http://www.unocha.org/publications/report/libya/libya-flood-response-humanitarian-update-28-november-2023-enar) and OCHA, "Libya: flood response humanitarian update (as of 17 October 2023)", 19 October 2023. Available at [www.unocha.org/publications/report/libya/libya-flood-response-humanitarian-update-17-october-2023-enar](http://www.unocha.org/publications/report/libya/libya-flood-response-humanitarian-update-17-october-2023-enar)

<sup>33</sup> OCHA, "Yemen" (December 2023). Available at [www.unocha.org/yemen](http://www.unocha.org/yemen)

homes and lands in the region because of these complex emergencies. In such emergencies, the exact numbers and circumstances of dispossessed and displaced persons are difficult to determine and may not illustrate the depth of the crisis. The Pinheiro Principles provide a basis for ensuring that everyone, regardless of the cause of their displacement, such as conflict, development activities, climate change and disaster, is treated equitably, and that all categories of affected persons can exercise their housing, land and property restitution rights when circumstances so warrant.<sup>34</sup>

**Conflict prevention** – As illustrated by several cases in the Middle East and North Africa region, failure to protect housing, land and property restitution rights following past violations has likely exacerbated tensions and may have even ignited new conflict and displacement. Although the Principles are designed to redress housing, land and property rights violations after the fact, they also serve as an indicator of how such violations may lead to conflict that would violate housing, land and property rights and require restitution. The measures set out in the Principles clearly explain the consequences of housing, land and property rights violations through dispossession, destruction and displacement, and may serve as a deterrent for States and third parties to commit such violations.<sup>35</sup> The Principles encourage specific conflict prevention measures, such as reforming housing, land and property administration procedures, preventing expropriations that do not meet the public purpose criteria and combatting forced evictions of informal residents or customary rights holders. It is also crucial to avail land for groups dependent on this resource for their livelihood or cultural identity and to be cognizant of and respect traditional tenure systems and corresponding claims.

**State formation and nation-building** – Housing, land and property restitution is a practical necessity for state formation and nation-building, as demonstrated by recent efforts that failed to achieve housing, land and property restitution and contributed to new displacement crises, such as in South Sudan.<sup>36</sup> Housing, land and property restitution

resonates with the core “equal justice under law” principle of a democratic state, which fosters domestic legitimacy and the predictability needed for the enjoyment of rights. For instance, housing, land and property issues form the cornerstone of state formation in the Occupied Palestinian Territory. It became a non-member observer State of the United Nations through General Assembly resolution 67/19 on 29 November 2012 in which the General Assembly reaffirmed the right of the Palestinian people to self-determination and to independence in their territory, which has been occupied since 1967. The right of return of Palestinian refugees, including the right to restitution of property has been recognized in numerous United Nations resolutions.<sup>37</sup> Nevertheless, the housing, land and property restitution rights of Palestinians, including those residing as refugees outside of the Occupied Palestinian Territory, remain contested and complex in the light of the stalled peace process.<sup>38</sup>

**Voluntary repatriation/return agreements and operations** – Coordinated voluntary repatriation/return operations and their underlying agreements can also include explicit housing, land and property rights protection, including restitution provisions for returnees. Voluntary repatriation agreements concerning Viet Nam, Guatemala, the Democratic Republic of the Congo, Mozambique, Rwanda, Cambodia, Angola, Georgia, Burundi and many other countries have enshrined housing, land and property restitution rights.<sup>39</sup> The Principles can be used as an important and convenient source of international standards supporting the inclusion of housing, land and property restitution within current and future voluntary repatriation and return plans and their implementation (see Principle 10 for more information).

**Protracted displacement and durable solutions** – The Principles are applicable to all groups of refugees and displaced persons, regardless of the duration of their displacement. This includes situations of long-term displacement during which refugees or displaced persons may have found temporary, but not durable, solutions

<sup>34</sup> Hassine, *Handling Climate Displacement*. See also Scott Leckie and Chris Huggins (eds.), *Repairing Domestic Climate Displacement: The Peninsula Principles* (Routledge, 2016).

<sup>35</sup> John W. Bruce and Sally Holt, “Land and conflict prevention”, *Conflict Prevention Handbook Series* (Colchester, United Kingdom, Initiative on Quiet Diplomacy, University of Essex, 2011), pp. 94–102.

<sup>36</sup> David K. Deng, “Between a Rock and a Hard Place: Land Rights and Displacement in Juba, South Sudan” (Juba: South Sudan Law Society, February 2106); Adam Hyde, “Jonglei state intercommunal violence: from restitution to revenge,” *African Arguments*, 28 February 2012. Available at <http://africanarguments.org/2012/02/28/intercommunal-violence-in-jonglei-state-from-restitution-to-revenge-by-adam-hyde/>

<sup>37</sup> For example, General Assembly resolution 194 (III) states that “refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or equity, should be made good by the Governments or authorities responsible”.

<sup>38</sup> Michael R. Fishbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict* (New York, Colombian University Press, 2003).

<sup>39</sup> Scott Leckie (ed), *Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials* (Cambridge, United Kingdom, Cambridge University Press, 2007), pp. 45–56.

to their displacement. Long-term displacement *does not* extinguish or de-legitimize housing, land and property rights and restitution claims. Neither does a decision by a refugee or displaced person to resettle, integrate locally or return. The Principles can be used as a basis for advocacy efforts towards restitution rights for long-term

displaced persons and communities. Although restitution and compensation rights are not affected by the passage of time, the duration of dispossession can create practical difficulties regarding the availability of evidence or the existence of good faith third parties having competing claims over the same land.

### Box 3: The Inter-Agency Standing Committee on Durable Solutions for Internally Displaced Persons<sup>40</sup>

The right to restitution has been acknowledged as a key element of durable solutions to displacement in the 2010 Inter-Agency Standing Committee Framework on Durable Solutions for IDPs (Framework). The Framework sets out eight criteria against which progress towards durable solutions should be assessed. The fourth criterion focuses on access to effective mechanisms to restore housing, land and property or to provide compensation. Various organizations cooperated to operationalize each criteria into a set of measurable and statistically sound indicators. The following five indicators were developed for the criterion on restitution:

1. Existence of effective and accessible mechanisms to resolve housing, land and property disputes relevant to displacement and steps taken to overcome the most common challenges to implementing housing, land and property rights;
2. Percentage of housing, land and property claims of IDPs that are resolved and enforced and number of remaining claims;
3. Percentage of IDPs remaining without adequate housing, reduction in this percentage over time and comparison with the percentage for the resident population or the national average (as appropriate);
4. Percentage of damaged or destroyed houses of IDPs adequately repaired;
5. IDPs have access to support programmes (including access to credits) to restore or improve housing, land and property on the same basis as the resident population.

The indicators should be disaggregated by sex and age. This is particularly relevant because of the problems women or orphans/unaccompanied children may face in obtaining recognition of their ownership or access to the property need special attention.

**Harmonization with the 2030 Sustainable Development Agenda** – Efforts towards restitution must consider the situation of refugees and displaced persons within the current and longer-term development objectives of the country, and the global 2030 Agenda for Sustainable Development and the call for “leaving no one behind”. Several principles, goals, targets and indicators related to housing, land and property stress the importance of secure access to housing, land and property for the realization of Sustainable Development Goal 1 on ending poverty, Goal 2 on eradicating hunger, Goal 5 on gender equality, Goal 11 on developing inclusive and sustainable cities and Goal 16 on peace, justice and legal recognition before the law. More specifically, the Sustainable Development Goals address the right to self-determination and measures to

end colonization and foreign occupation. Sustainable Development Goal indicator 1.4.2 seeks to measure the level of secure tenure enjoyed in each country. Goal 5 on gender equality accompanies target 5.a on women’s improved access to and control over land and natural resources. Goal 11, on inclusive, safe, sustainable and resilient cities and human settlements, accompanies several targets and indicators related to housing, land and property restitution processes. In the contexts of forced displacement and dispossession, fostering housing, land and property restitution efforts contribute towards the realization of the Sustainable Development Goals and should, therefore, take place within the 2030 Agenda with a view to long-term positioning, global policy commitments and related State obligations.<sup>41</sup>

<sup>40</sup> Inter-Agency Standing Committee, IASC Framework on Durable Solutions for Internally Displaced Persons (Washington, D.C., The Brookings Institution – University of Berne Project on Internal Displacement, April 2010); and see also the Inter-Agency Durable Solutions Indicator Library. Available at <https://inform-durablesolutions-idp.org/indicators-2/#:~:text=The%20Interagency%20Durable%20Solutions%20Indicator,durable%20solutions%20analysis%20and%20monitoring>

<sup>41</sup> See General Assembly resolution 70/1.



## Frequently asked questions

### Who is responsible for protecting housing, land and property restitution rights?

The ultimate responsibility for securing the implementation of the rights in the Principles rests with the State and its organs, including local governments. As organs of the State, all spheres of government are required to uphold the country's obligations under international law, albeit with differentiated functions. It may be opportune to inform central or local authorities of their duties under international law as they relate to their potential contributions to rectify and prevent housing, land and property violations. These Principles provide a basis for such an orientation in [section V](#) on legal, policy, procedural and institutional implementation mechanisms.

When non-State actors, such as militias and private companies, cause displacement, the State in which the displacement took place and in which those displaced hold housing, land and property rights, remains legally responsible for ensuring the protection of restitution rights. At the same time, non-State actors responsible for human rights violations could also be held liable. Relevant authorities of the territorial or jurisdictional State should initiate processes to hold those parties accountable. In situations of transitional governance, under which the United Nations, regional organizations or (coalitions of) countries exercise effective powers of State (as has been the case in Cambodia, East Timor, Iraq and Kosovo), the transitional authority concerned maintains primary responsibility to implement international human rights law, as described in the Principles.

### Are the Pinheiro Principles legally binding?

The Principles are not a treaty or a formal law and therefore, do not have the same binding status accorded to such texts. However, the Principles are explicitly based on existing international, regional and national laws and have persuasive authority. They were prepared by leading legal experts in the relevant fields during a seven-year process that commenced in 1998 when a resolution on this matter was adopted by the former United Nations Sub-

Commission on the Protection and Promotion of Human Rights. The Sub-Commission, which was accountable to the United Nations and its member states, endorsed the Principles in August 2005.<sup>42</sup>

### How are the terms “arbitrary” and “unlawful” best understood?

“Arbitrary” and “unlawful” are shorthand expressions found in human rights law, meaning that it contravenes or fails to comply with the normative standard in question. Generally, an arbitrary act is one with no legal (or lawful) basis and is without normative justification. An unlawful act is one that is clearly contrary to the relevant law concerned. However, an act can be lawful under national legislation, but unlawful with respect to international human rights standards, for instance when national legislation allows the authorities to conduct a forced eviction operation that results in mass displacement. In determining whether displacement is either arbitrary, unlawful or both, due regard must be given to the terms of municipal and national laws, together with the relevant international laws binding on all organs of the State concerned. However, it should be noted that certain laws can be implemented in an arbitrary manner and that national laws sometimes are arbitrary in character.<sup>43</sup>

### Do the Principles apply only to housing and land, or does the term “property” also encompass commercial properties, including agricultural land?

While the Principles are primarily concerned with restoring the rights of refugees and displaced persons to housing, land and property that they owned, held rights over or otherwise lived in at the time of their displacement, they also refer to rights to reacquire agricultural land and commercial properties. This would apply, in particular, in instances in which such properties or land were arbitrarily or unlawfully acquired by any party at any stage of the dispossession and/or displacement. Commercial properties may include, among others, agricultural land, vehicles, office and construction equipment and livestock. Properties of nomads and Bedouins, such as camels, goats and tents, may be the subject of demands for restitution and compensation as well.

<sup>42</sup> Scott Leckie and Khaled Hassine, *The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, a Commentary* (Leiden, Netherlands, Martinus Nijhoff Publishers, 2016).

<sup>43</sup> For example, the European Court of Human Rights has repeatedly underlined that a law must fulfil certain criteria not to be considered arbitrary. See Laurent Sermet, *The European Convention on Human Rights and Property Rights* (Strasbourg, France, Council of Europe publishing, 1999); and European Convention on Human Rights, article 8.

### What are some of the key lessons learned in dealing with restitution challenges?

Over past two decades, efforts have increased, both locally and internationally driven, to manage the complexities of housing, land and property restitution. Some of the key lessons learned during this period are the following:

- The desirability to include restitution rights directly (with)in relevant peace agreements, Security Council resolutions and voluntary repatriation agreements;
- The positive contributions that can be made by including housing, land and property and restitution competencies within the staffing structures of post-conflict peace operations;
- The need for early, appropriate and integral planning to deal with restitution concerns, and to determine the applicable legal and policy framework during the planning process;
- The recognition that peacekeepers have an important role to play in securing restitution rights, such as being required to perform law and order functions, secure housing and property records and protect public officials and humanitarian aid workers who are implementing restitution programmes and the lives of returnees and displaced persons themselves;
- Ignoring the restitution demands of returnees and the housing need of secondary occupants will aggravate rather than reduce tensions or violence;
- Restitution remains equally important for refugees and displaced persons who choose not to return (namely refugees and displaced persons who choose to resettle, integrate locally or voluntarily wish to receive compensation in lieu of restitution);
- The growing awareness that the resolution of housing, land and property restitution claims and disputes can be a vital contributor to economic and social stability and also to broader reconciliation and peacebuilding efforts.

### What is the relationship between restitution as a legal remedy and the voluntary choice of a durable solution to displacement?

Housing, land and property restitution practitioners need to distinguish between the choice of durable solutions and legal remedies. Durable solutions may include return, local integration or resettlement to a third location. Practitioners have an important role to play in ensuring that the decisions and choices of refugees and displaced persons are freely made and based on prior and accurate information known to them. The Principles clearly provide that housing, land and property restitution rights are not prejudiced by the non-return of those possessing these rights. Accordingly, restitution is not affected by the voluntary choice of resettlement or local integration, as opposed to return. Indeed, restitution can play a critical role for refugees and displaced persons choosing not to return. For instance, voluntary sale, exchange or lease of restored housing, land and property can generate an income stream that can contribute towards sustainable local integration or resettlement. Restitution, as a legal remedy, is often a fundamental precondition for the sustainability of virtually all imaginable durable solutions, not just return. In this sense, housing, land and property restitution may often be the first step in restoring a degree of autonomy to persons reduced to poverty and dependence by virtue of arbitrary displacement from their homes.

## Useful guidance

### United Nations and international guidance:

- Guidance Note of the United Nations Secretary-General: The United Nations and Land and Conflict, March 2019. Available at <https://unhabitat.org/sites/default/files/documents/2019-05/sg-guidance-note-on-land-and-conflict-march-2019-1.pdf>
- OHCHR and the UN-Habitat, Fact Sheet No. 21 (Rev. 1): The Right to Adequate Housing, 2009. Available at [www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-21-rev-1-human-right-adequate-housing](http://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-21-rev-1-human-right-adequate-housing)
- OHCHR, *Land and Human Rights – Standards and Application* (United Nations Publication, 2015). Available at [www.ohchr.org/sites/default/files/Documents/Publications/Land\\_HR-StandardsApplications.pdf](http://www.ohchr.org/sites/default/files/Documents/Publications/Land_HR-StandardsApplications.pdf)
- OHCHR, *Land and Human Rights: Annotated Compilation of Case Law* (United Nations publication, 2015). Available at [www.ohchr.org/sites/default/files/Documents/Publications/Land\\_HR-CaseLaw.pdf](http://www.ohchr.org/sites/default/files/Documents/Publications/Land_HR-CaseLaw.pdf)
- Interagency Durable Solutions Indicator Library. Available at [www.inform-durablesolutions-idp.org](http://www.inform-durablesolutions-idp.org)
- *The New Urban Agenda, Habitat III* (2016). Available at <https://habitat3.org/the-new-urban-agenda/>
- Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 30 December 2013 (A/HRC/25/54).

### Other sources:

- Brookings-Bern Project on Internal Displacement, *Operational Guidelines on Human Rights Protection in Situations of Natural Disasters* (2008). Available at [www.brookings.edu/research/human-rights-and-natural-disasters-operational-guidelines-and-field-manual-on-human-rights-protection-in-situations-of-natural-disaster/](http://www.brookings.edu/research/human-rights-and-natural-disasters-operational-guidelines-and-field-manual-on-human-rights-protection-in-situations-of-natural-disaster/)
- Scott Leckie (ed), *Returning Home: Housing and Property Restitution for Refugees and Displaced Persons – Volume 2* (Brill, 2021).
- Rhodri C. Williams, “The contemporary right to property restitution in the context of transitional justice”, Occasional Paper Series, May 2007. Available at [www.brookings.edu/articles/the-contemporary-right-to-property-restitution-in-the-context-of-transitional-justice/](http://www.brookings.edu/articles/the-contemporary-right-to-property-restitution-in-the-context-of-transitional-justice/)
- Scott Leckie and Khaled Hassine, *The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, a Commentary* (Leiden, Netherlands, Martinus Nijhoff Publishers, 2016).
- John G. Sprankling, *The International Law of Property* (Oxford, United Kingdom of Great Britain and Northern Ireland, Oxford University Press, 2014).



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## **SECTION II**

# **THE RIGHT TO HOUSING AND PROPERTY RESTITUTION**

### **PRINCIPLE 2: The right to housing and property restitution**

- 2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.
- 2.2 States shall demonstrably prioritise the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

## Key Issues

Firmly grounded in existing international law, policy and best practices, the Pinheiro Principles recognize housing, land and property restitution as an essential feature of restorative justice processes, long-lasting peace and sustainable development. In addition, comprehensive responses to displacement must be underpinned by the principle of restitution as a legal and practical remedy that can support refugees and displaced persons in achieving a durable solution, whether through voluntary return, local integration or resettlement.

## Relevant laws and standards

The term *restitution* refers to an equitable remedy (or a form of restorative justice) by which individuals or groups of persons who suffer loss, destruction or damage by a violation of their human rights are restored as far as possible to their original pre-loss or pre-injury position. The right to a remedy for human rights violations has perhaps been best articulated in the General Assembly resolution 60/147 titled “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law” (Basic Principles). In this framework, it is stated that “Restitution should, whenever possible, restore the victim to the original situation before the gross violations of human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate, restoration of liberty, enjoyment of human rights, identity, family life and citizenship; return to one’s place of residence, restoration of employment and return of property.”<sup>44</sup>

As a general legal remedy, restitution has a history, dating back more than a century, while the specific assertion of housing, land and property restitution rights dates back to from United Nations resolutions adopted in the 1940s. Over the past several decades, a comprehensive, individual right of refugees and displaced persons to housing, land and property restitution has emerged. Principle 2.1 recognizes this basic right of all refugees and displaced persons to housing, land and property restitution.

The term “housing, land and property restitution” was developed based on numerous legal and other standards adopted in past decades that explicitly or implicitly recognize the restitution rights of refugees and displaced persons. These standards are found within treaty provisions

under international law, including regional human rights law. Regarding the latter, the Arab Charter of Human Rights,<sup>45</sup> which was adopted in 1994, revised in 2004 and entered into force in 2008, implies the recognition of the restitution rights of refugees and displaced persons in the following articles:

- **Article 21(1):** No one shall be subjected to arbitrary or unlawful interference with regard to his privacy, family, home or correspondence, nor to unlawful attacks on his honour or reputation;
- **Article 26(1):** Everyone lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force;
- **Article 27(1):** No one may be arbitrarily or unlawfully prevented from leaving any country, including his own, nor prohibited from residing, or compelled to reside, in any part of that country; and (2) No one may be exiled from his country or prohibited from returning thereto;
- **Article 31:** Everyone has a guaranteed right to own private property and shall not under any circumstances be arbitrarily or unlawfully divested of all of any part of his property;
- **Article 38:** Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights.

The International Conference on the Great Lakes Region, of which Egypt is a co-opted member, has adopted the Protocol on the Property Rights of Returning Persons as part of its Pact on Stability, Security and Development in the Great Lakes Region. This 2006 Protocol, which is legally binding, outlines the obligations of members to the recovery of housing, land and property and facilitate protection of abandoned housing, land and property, among others, upon return to their areas of origin (article 2.2).<sup>46</sup>

The Guiding Principles on Internal Displacement stipulate that competent authorities have the duty and responsibility to assist IDPs to recover the property and possessions that they left behind. In case recovery is not possible, they are obliged to assist IDPs with obtaining compensation or another form of just reparation.<sup>47</sup>

<sup>44</sup> See General Assembly resolution 60/147, para. 19.

<sup>45</sup> Council of the League of Arab States, Arab Charter on Human Rights (2004).

<sup>46</sup> International Conference on the Great Lakes Region, Protocol on the Property Rights of Returning Persons, 30 November 2006.

<sup>47</sup> See E/CN.4/1998/53/Add.2, article 29(2).

Article XI.4 of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) calls for the establishment of “appropriate mechanisms providing for simplified procedures where necessary, for resolving disputes relating to the property of internally displaced persons.” Article XI.5 of the Kampala Convention calls for State Parties to take “appropriate measures, whenever possible, to restore the lands of communities with special dependency and attachment to such lands upon the communities return, reintegration and reinsertion”.

Standards recognizing restitution rights of refugees and displaced persons can also be found in international humanitarian law and international criminal law. The International Criminal Court, for instance, formally provides two channels for the reparation of victims: (1) based on the recognition of victimization, through the Voluntary Fund for Victims; and (2) through means of sentencing of convicted persons. Restitution rights of refugees and IDPs are highlighted in numerous key documents, including Security Council and General Assembly resolutions, UNHCR Executive Committee Conclusions and human rights mechanisms, and within the jurisprudence of many human rights bodies, including the European Court of Human Rights.

Reference to restitution rights is also made in various peace agreements ending conflicts (see box 15) and numerous voluntary repatriation agreements concluded between UNHCR, countries of origin and countries of asylum (see Principle 10 for more information). Many domestic laws and other types of legislation contain various formulations of housing, land and property restitution rights for returning refugees and displaced persons as well. Examples can be found in Bosnia and Herzegovina, Kosovo, Colombia and Iraq.

### Restitution versus compensation

While compensation issues are also addressed by Principle 21, it is within Principle 2.1 that the question of compensation *in lieu* of restitution is first raised. While both restitution and compensation rights are enshrined within the text, Principle 2.2 indicates that there is a clear preference for restitution as the remedy for displacement. States are expected to demonstrably prioritize restitution rights and, therefore, not view rights to restitution and rights to compensation as necessarily the same when seeking redress and durable solutions. Essentially, the Principles establish that options to secure restitution must first be exhaustively explored and determined to be impractical prior to carrying out any subsequent efforts that involve compensation-based approaches. This does not apply if refugees and displaced persons **consciously** and **voluntarily** chose or express a clear preference for

compensation-based approaches on the understanding that this may conclude the restitution process for them and result in them being unable to submit future housing, land and property restitution claims. This could be relevant in a situation in which a very long period has passed since the displacement and the displaced have rebuilt their lives elsewhere and do not wish to relocate, even if the conditions for return are safe.

Accordingly, given the primacy of restitution rights within the Principles, compensation is only viewed as an acceptable substitute for the physical recovery of the original housing, land and property when the three following key conditions are met: (1) the restoration of housing, land and property rights is factually impossible; (2) only following a determination to this effect by an independent and impartial tribunal or another legitimate and competent body without vested interests in the matters concerned; and (3) restitution rights holders consciously and voluntarily prefer compensation-based solutions.

The term factually impossible (also sometimes referred to as “materially impossible”) first addresses the actual physical damage or destruction of housing, land and property that is a common result of armed conflict, or in the event of some natural disasters, the actual non-existence of original lands (in the event of a mudslide, for example). The term does not refer to political or related obstacles that may prevent a particular restitution case from being resolved on the basis of actual repossession of original housing, land and property. Handbook users need to be mindful that those who want to prevent restitution and return may make disingenuous offers of cash or other forms of compensation to refugees and displaced persons to remove their outstanding housing, land and property restitution claims (possibly without their knowledge). Consequently, and particularly when displacement was arbitrary or unlawful, the provision of compensation should not be an acceptable alternative to restitution when actual restitution is made infeasible due to resistance by a certain State or political grouping or because of the unwillingness of the international community to strongly support restitution rights. However, in cases in which the social cost of implementing an individual restitution may be unreasonably disruptive (such as a case in which a factory employing 200 workers has to be demolished to enforce a restitution claim), this could in some situations be classified as materially impossible, and compensation arrangements would need to be considered.

At the same time, it must be emphasized that in some instances, a combination of restitution and compensation *in lieu* of restitution may offer the most appropriate remedy to victims, bearing in mind that compensation should never be offered because of hesitance on the part of governments to accept the return of refugees and displaced persons.

For example, the Iraqi Property Claims Commission was established in 2004 by the Coalition Provisional Authority of the United States-led occupation to address, among other issues, the large-scale housing, land and property violations during the Ba’athist period. Claimants were given the choice between requesting restitution or compensation for their housing, land and property. When victims opted for the latter option, compensation was to be of equal replacement value to the original housing, land and property at the time the claim is submitted. The law further identifies the Iraqi State as responsible for paying the compensation.<sup>48</sup> On the other hand, while both restitution and compensation *in lieu* of restitution were

enshrined in the Dayton Peace Accords ending the war in Bosnia and Herzegovina, the international community decided to focus solely on restitution and return and did not use the mechanism foreseen by the Accords to provide compensation *in lieu* of restitution. The fund for this remained empty, as donors feared that to compensate the displaced for their housing, land and property, without return and restitution, would consolidate the objectives of ethnic cleansing. For more information on compensation *in lieu* of restitution as well as compensation in the form of financial or in-kind assistance to complement restitution processes (to enable repair or reconstruction of a damaged or destroyed home), see Principle 21.

#### Box 4: Restitution as the preferred remedy: the case of the Occupied Palestinian Territory

The restitution preference is also clear and consistent with the international law prohibitions against demographic manipulation, colonization and partition of a self-determination unit.<sup>49</sup> For example, the General Assembly and Security Council have asserted in many resolutions that the actions of Israel to change the physical character and/or demographic composition of the Occupied Palestinian Territory (and Jerusalem, in particular), are legally “null and void and must be rescinded in compliance with the relevant resolutions of the Security Council”.<sup>50</sup> In such a context, it follows that restitution for gross violations of housing, land and property rights may also be legally required under binding and enforceable international law. That prohibition and the reparation rights of Palestinian forced eviction victims also apply in the case of tenants in the occupied territories, including Jerusalem, replaced by inhabitants from the non-indigenous demographic group. While reparation is the entitlement of victims of gross violations, including forced eviction,<sup>51</sup> mere compensation in such a case alone would perpetuate the prohibited outcomes of a wholly illegal situation.

#### Other key issues

Complementary measures to restitution aimed at protecting human rights and considering the humanitarian, development and peace nexus should be envisaged when needed. Depending on the urban or rural context, these measures can include vocational training, distribution of tools and livestock or small grants to initiate a business. Colombia provides a useful example of a comprehensive approach that combines restitution and transitional justice efforts with development measures. The land chapter of the country’s peace agreement complements restitution policies with measures to support regional development in return areas and, including, among others, land distribution to the landless.<sup>52</sup> Furthermore, as monetary compensation for a lost house in rural areas may not be sufficient to afford decent housing in cities, investing in affordable housing policies and programmes can also contribute to durable solutions and overall development.

Because restitution does not benefit landless or homeless people, development policies and programmes facilitating secure and affordable access to land and housing and alleviation of poverty and inequalities may complement restitution.

Finally, users of the Handbook should note that in certain contexts, restitution of original housing, land and property may not be practical because of major historical developments. It may also not be desirable because patterns of ownership prior to displacement were discriminatory or unequal.

For example, restoring the land in Afghanistan to those who held it prior to the entirely legitimate (even if improperly carried out) land reform measures of the 1970s would mean returning the country to virtual feudalism and also ignoring the formal, accrued or customary rights

<sup>48</sup> Peter Van der Auweraert, “Property Restitution in Iraq”, Symposium on Post-Conflict Property Restitution, 6–7 September 2007; and Khaled Hassine, *Regularizing Property Rights in Kosovo and Elsewhere* (Köln, Germany, Wiku, 2010), pp. 178–209.

<sup>49</sup> Jamie Trinidad, *Self-Determination in Disputed Colonial Territories* (Cambridge, United Kingdom, Cambridge University Press, 2018); and Enver Hasani, *Self-Determination, Territorial Integrity and International Stability: The Case of Yugoslavia* (Vienna, National Defense Academy and Bureau for Security Policy, in cooperation with the PfP-Consortium of Defence Academies and Security Studies Institutes, 2010).

<sup>50</sup> Most explicitly Security Council resolution 476.

<sup>51</sup> Commission on Human Rights resolutions 1993/77 and 2004/28, para. 1.

<sup>52</sup> Colombia, Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, 24 November 2016.

of all those who lived on such lands in the intervening period. Accordingly, housing, land and property issues are intimately linked with development, poverty reduction and fighting inequalities. The remedies proposed in the context of housing, land and property restitution need to take into consideration the political, historical and socioeconomic context, which can facilitate or hinder implementation and contribute to reconciliation and peacebuilding.

## Opportunities for applying Principle 2

**During the preparation of voluntary repatriation/return plans** – Practitioners should raise the basic concepts found in Principle 2 during the drafting of plans, proposals or other documents that address the return of refugees or displaced persons to their original housing, land and property to ensure that explicit recognition is given to the restitution rights of returnees. During negotiations with States (and other agencies) on these issues, the principle that restitution must be treated as the preferred remedy (although not tied solely to return as the only and exclusive durable solution) should be strongly supported. Voluntary repatriation to one’s own country without explicit provisions ensuring that the housing, land and property restitution dimensions of return are respected has become increasingly difficult to justify and likely will result in unfinished and incomplete displacement solutions, in addition to further vulnerability and instability. For more information on voluntary repatriation, see Principle 10.

**When restitution is resisted** – Handbook users may encounter actors and stakeholders that are reluctant to accept the restitution right of refugees and displaced persons. Often, housing, land and property issues are among the root causes of the displacement and conflict in the first place, making restitution a sensitive matter. Resistance may also be attributed to entrenched political or ethnic bias on the part of certain actors against the restitution rights or even the return of refugees and displaced persons. The complex dimensions of conflict, as shown from examples in the Middle East and North Africa region, have made the prospects of restitution more likely to be influenced by bias. This compounds the complexity of a crisis and renders a resolution to a crisis much more difficult. In such cases, reference to Principle 2 and the extensive normative basis supporting this Principle may be useful. The considerable body of law at all levels – national, regional and international – that recognize restitution

rights strengthens arguments encouraging public officials to accept restitution rights. For instance, in Bosnia and Herzegovina<sup>53</sup> and in a variety of other settings, the international community’s insistence on the principle of restitution was vital in ultimately changing originally very recalcitrant governmental opposition to return by minority groups any form of minority return that would undo years of displacement deliberately targeting certain population groups.

**When assisting States to legislate on restitution issues** – An increasing number of States have or are engaging in legislative efforts in support of housing, land and property restitution rights. Among them are the Governments of Iraq, Georgia, Albania, Bosnia and Herzegovina, Colombia and South Africa. Legislative drafting efforts provide a good opportunity to present the Pinheiro Principles to the drafters involved, and to encourage them to use the text and this Handbook as a basis for the eventual restitution laws that seek the long-term stability of the State.

**When compensation in lieu of restitution is under discussion** – Governments may not present just, satisfactory and realistic compensation proposals, especially those reluctant to allow refugees or displaced persons to exercise their housing, land and property restitution rights. If this occurs, users of the Handbook should aim to ensure that the contents of Principle 2 are taken fully into account. In some instances, it may be advantageous to consider compensation *in lieu* of restitution when this is clearly the expressed wish of the refugees and displaced communities concerned and when restitution would, in the words of the International Law Commission’s Draft Articles on State Responsibility “create a burden out of all proportion to the benefit deriving therefrom”. Conversely, all parties must exercise great care to ensure that such norms are not used to prevent return and the exercise of the housing, land and property restitution rights of refugees and displaced persons. For example, in 1973, Israel passed the Absentee Property (Compensation) Law, which allowed claims for monetary compensation by Palestinian property owners resident in Israel whose land had been confiscated from them under the Absentee Property Law Act of 1950. However, the conditions under the law were restrictive due to a number of limitations, including being only applicable to Palestinians that still resided in Israel; most Palestinians continued to insist on their right to full property restitution.<sup>54</sup> See the section on Principle 21 for more information on compensation.

<sup>53</sup> In the case of Bosnia and Herzegovina, the binding powers, granted by the Dayton Peace Agreement to the Office of the High Representative, were instrumental in overcoming reluctance at the national and local levels against restitution. The binding powers allowed the Office of the High Representative to remove from office public officials, including mayors and ministers, that were obstructing the implementation of the peace agreement, including by opposing restitution.

<sup>54</sup> Norwegian Refugee Council, “The Absentee Property Law and its implementation in East Jerusalem”, 15 February 2017. Available at [www.nrc.no/resources/legal-opinions/the-absentee-property-law-and-its-application-to-east-jerusalem/](http://www.nrc.no/resources/legal-opinions/the-absentee-property-law-and-its-application-to-east-jerusalem/)



## Frequently asked questions

### How long do refugees and displaced persons retain restitution rights?

Some refugee and displaced populations may have been physically displaced from their original homes for many years, and in some cases, decades. Although there is no universally valid number of years that restitution claims remain valid for, several points can be made as guidance in this regard.

**First**, Principle 2.2 asserts that housing, land and property restitution rights are not prejudiced by the non-return of those possessing these rights. As such, practitioners must distinguish between remedies and durable solutions; restitution rights are not affected by the voluntary choice of resettlement or local integration, as opposed to return, and do not lapse purely based on a refugee or displaced person not being able to physically exercise these rights.

**Second**, restitution rights and related claims to housing, land and property do not lapse when unreasonable, disproportionate or unfair date restrictions that do not adequately reflect the timespan of violations are imposed on the restitution process. Restitution experiences around the world reveal a very wide range of cut-off dates for establishing the basis of restitution claims. For example, in South Africa, restitution claims could be submitted for any discriminatory land dispossession carried out from 1913 to the end of apartheid in the early 1990s. Many of those who lost properties in Eastern Europe from 1945 onwards were accorded restitution rights following the collapse of the Communist governments in the region in the late 1980s and early 1990s. By contrast, restitution claims to recover original homes and lands following the 1994 genocide in Rwanda were only deemed valid if those making the claims had not been displaced for longer than ten years. In the Middle East and North Africa region, a variety of United Nations resolutions dating back to 1948 confer restitution rights to displaced Palestinian refugees.<sup>55</sup> Conversely, rights groups and the Government of Israel have called for a just solution for the property claims of thousands of Jews who were displaced and dispossessed of their property in several Arab countries (such as Iraq, the Syrian Arab Republic and Libya) after the 1948 War.<sup>56</sup> The timespan issue can become a subject of national debate, as it has been in the determination of transitional justice statutes in Libya and Yemen, among other countries (see boxes 1 and 2).

**Third**, States cannot adopt unreasonable time periods during which outstanding restitution claims can be submitted. Time periods and deadlines need to take into consideration the possible limitations of circumstances and context in which claimants need to exercise their restitution rights (see also Principle 13).

### Does the local integration of a refugee or displaced person extinguish a restitution claim?

No. Some have argued that once a refugee or displaced person locally integrates (finds a durable solution in the area to where they were displaced), any outstanding restitution claims to their original housing, land and property are no longer valid. This view is not correct and erroneously confuses the concept of a durable solution with a legal remedy. As mentioned above, restitution claims do not easily lapse and for such claims to be considered no longer outstanding, a proper judicial or another procedure must be in place, rights invoked and claims presented, and eventually adjudicated by an appropriate and independent body. Consequently, if the original cause of displacement was either arbitrary, unlawful or both, and a refugee voluntarily chooses to pursue local integration, this does not, in and of itself, mean that they do not continue to enjoy restitution rights over their original homes and lands. Conversely, care must be taken to ensure that States do not prevent local integration by refugees and displaced persons who wish to pursue this solution because of the right to return that such groups may have in principle, but effective exercise of the right is prevented by the State responsible for the original displacement. Based on the right to freedom of movement described in Principle 9 and included in article 12.1 of the International Covenant on Civil and Political Rights, “[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence”.<sup>57</sup>

### Does restitution necessarily mean repossession of an original home?

While the return to, recovery of and repossession of one’s original home should remain the core objective of any restitution process, in practice, restitution can take different forms, depending on local circumstances. It is not necessarily a complete return to the way they were before. A restitution process may involve a combination of return, negotiated tenure arrangements, facilitated sales of properties to which refugees voluntarily did not wish to return (but over which they retained rights)

<sup>55</sup> See, for instance, General Assembly resolutions 194 (III), para. 11 and 3236 (XXIX), para. 2.

<sup>56</sup> The Times of Israel, “Israel said to seek \$250b compensation for Jews forced out of Arab countries”, 5 January 2019. Available at [www.timesofisrael.com/israel-said-to-seek-250b-compensation-for-jews-forced-out-of-arab-countries/](http://www.timesofisrael.com/israel-said-to-seek-250b-compensation-for-jews-forced-out-of-arab-countries/)

<sup>57</sup> See General Assembly resolution 2200A (XXI), article 1.

and, when appropriate, the provision of compensation. Many possible scenarios can emerge within the context of a restitution process. However, in accordance with the Principles, the key points remain:

1. Refugees and displaced persons have a *preferential* right to housing and property restitution as a legal remedy;
2. Any divergence from this should be exceptional and fully justifiable in terms of the relevant law;
3. All refugees and displaced persons must be able to access durable solutions in conformity with their rights.

### How does customary (traditional) law relate to restitution?

Handbook users working in the region may be confronted with refugees and displaced persons reclaiming rights based on custom (*urf*) or restitution rights established under customary law. In several parts of the region (and in other regions), customary land arrangements and laws are equitable, familiar, widely accepted, far simpler to administer and more cost effective than formal, title-based systems. However, whether customary laws and tenure systems are recognized and/or co-exist with statutory laws (legal pluralism) needs to be examined in each country.

## Useful guidance

### United Nations and international guidance:

- IOM, Global Protection Cluster on Housing, Land and Property and Solutions Alliance, *Guidance Note: Integrating Housing, Land and Property Issues into Key Humanitarian, Transitional and Development Planning Processes* (Geneva, 2018).
- COHRE, *Sources No. 7: Legal Resources on Housing and Property Restitution for Refugees and IDPs* (Geneva, 2001).
- Scott Leckie (ed.), *Returning Home: Housing and Property Restitution for Refugees and Displaced Persons – Volume 2* (Brill, 2021).
- General Assembly resolution 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” of 21 March 2006.
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### Other sources:

- Joseph Schechla, “Restoring values: institutional challenges to providing restitution and compensation for Iraqi housing and land rights victims” *نكس لاول ضررأل قوق كاهتنا اياحض ضريوعت ةيلمع هجاوت يتال ةيسسؤم لتاي دحتال: ميقال ةداعتسا* (Cairo, Housing and Land Rights Network, August 2005). Available at [www.hlrn.org/img/publications/restoring\\_values.pdf](http://www.hlrn.org/img/publications/restoring_values.pdf); [www.hlrn.org/img/publications/2values\\_final\\_ar\\_2\\_.pdf](http://www.hlrn.org/img/publications/2values_final_ar_2_.pdf)



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## **SECTION III**

# **OVERARCHING PRINCIPLES**

### **PRINCIPLE 3: The right to non-discrimination**

- 3.1 Everyone has the right to be protected from discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status.

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- 3.2 States shall ensure that de facto and de jure discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law.

## Key issues

Non-discrimination is an overarching principle of human rights treaty implementation and a non-derogable human right<sup>58</sup> that must not be breached under any circumstance, including in times of public emergency or war. It is protected in every major international human rights instrument, including the Universal Declaration on Human Rights,<sup>59</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>60</sup> Discrimination is similarly prohibited under article 2 of the African Charter on Human and Peoples' Rights<sup>61</sup> and both iterations of the Arab Charter on Human Rights.<sup>62</sup>

Principle 3 begins with recognition of the overarching principle of and distinct right to non-discrimination and equality of refugees and displaced persons in legal and practical terms. In the specific context of housing, land and property restitution, of course, this right is particularly fundamental, given many instances of displacement are rooted in the intentional discrimination of certain groups, especially racial, ethnic, linguistic, national, political and religious minorities. Housing, land and property destruction, dispossession and inhabitants' involuntary displacement and other forms of forced eviction are demonstrably discriminatory in nature when certain ethnic, racial or other groups are specifically targeted for removal from their homes. Those prohibited acts result in the *strengthening* of future restitution claims of persons whose rights were violated in this manner.

The patterns of housing, land and property-rights violations in certain cases reflect extreme discrimination against distinct groups that threatens to deny their existence in a country. Some cases involve *in situ* dispossession, while others combine forms of discrimination that involve dispossession, destruction and displacement that may rise to the level of ethnic cleansing, population transfer, apartheid, the denial of a people's self-determination and/or depriving them of their means of subsistence.

When implementing restitution programmes, upholding the right to non-discrimination is vital to developing durable solutions and assuring that the most-marginalized groups and vulnerable individuals can benefit from their housing, land and property restitution rights on an equal footing. The Pinheiro Principles also recognize that refugees and displaced persons may not be discriminated against in any sphere because of their uprooted status and must be guaranteed equal justice and protection under law. Strict compliance with the non-discrimination

principle should ensure that no one and no group entitled to housing, land and property restitution is prevented from securing these rights in practice based on arbitrary or inequitable treatment as a member of a group.

## Opportunities for applying Principle 3

**Analysing the causes of displacement** – To carry out restitution of housing, land and property or redress any serious violations of human rights or the International Humanitarian Law, the standards for remedy and reparation<sup>63</sup> call for the inclusion, recognition and repair of *the causes* of the deprivation. Standards for alleviating crises, including in these Principles, require a proper assessment of any discriminatory practice as a foundational step. A typical underlying cause of deprivation in general and housing, land and property rights violations in particular involves discrimination. It is increasingly rare for outright discrimination to be explicitly enshrined within national legislation. Nevertheless, discriminatory laws potentially affecting restitution rights remain in force in a range of countries. In addition, laws that seem non-discriminatory or “neutral” may result in discriminatory effects. Other causes of discrimination may originate outside of national law, but they may affect a particular group before and during displacement or in the context of return and/or housing, land and property restitution.

When reviewing the causes of displacement and the public and/or private actors responsible for it, practitioners should identify the sources of discrimination and related patterns that may indicate that discriminatory factors were motivating the displacement in question. Particular attention needs to be paid to ethnic and other motivations that may hinder the proper enforcement of housing, land and property restitution laws in accordance with the principle of non-discrimination. In northern Iraq, for example, the Yazidi community has been a victim of discriminatory policies that have violated their housing, land and property rights over decades (see box 5).

**Monitoring restitution programmes** – It is also important that Handbook users monitor restitution programmes to ensure that actions are not discriminatory whether by intent or not. In some countries, restitution or return rights might be accorded only to certain ethnic or religious groups to the detriment of others. For example, in the case of housing, land and property restitution in Iraq after 2003, international organizations and local

<sup>58</sup> See General Assembly resolution 2200A (XXI), articles 4.2 and 14.

<sup>59</sup> See General Assembly resolutions 17A (III) and 810 at 71 (1948), article 2.

<sup>60</sup> See General Assembly resolution 2200A (XXI), article 2.

<sup>61</sup> Organisation of African States, [Banjul] Charter on Human and Peoples' Rights (ACHPR), adopted 27 June 1981, document CAB/LEG/67/3 rev. 5.

<sup>62</sup> Council of the League of Arab States, Arab Charter on Human Rights, article 2 of the 1997 version, articles 3, 4, 34, 39 and 41 of the 2004 version.

<sup>63</sup> See General Assembly resolution 60/147.

### Box 5: Analysing the causes of displacement and housing, land and property rights violations in Iraq<sup>64</sup>

In 2014, the Islamic State in Iraq and the Levant deliberately targeted the Yazidi community in the district of Sinjar in Ninewa Governorate and forced an estimated 250,000 Yazidis to abandon their homes and flee to Mount Sinjar to seek subsequent refuge in the Kurdistan region of Iraq or leave the country. Meanwhile, unoccupied Yazidi settlements were either systematically demolished or seized by Islamic State in Iraq and the Levant fighters and allocated to its supporters. Some 6,000 homes are believed to have been destroyed in the district of Sinjar. In 2015, UN-Habitat conducted research to obtain a better understanding of how the convergence of several circumstances related to past discriminatory policies, forced relocation, double displacement and lack of tenure security may seriously affect the prospects for the Yazidi IDP community to return to their homeland in Sinjar.

The discriminatory policy that affected the land tenure rights of ethnic minorities in northern Iraq can be traced to the alienating demographic policy, which had led to a large-scale attempt to alter the demographic composition of the northern areas inhabited by Iraqi religious and ethnic minorities. This translated into the deportation of hundreds of thousands of Yazidi from their ancestral villages in the mountains to collective townships in the plains. In line with the discriminatory policy of the time, the Yazidis, who had to relocate and settle in newly laid out collective townships, were denied the right to register the assigned parcels in their names – a discriminatory course of action that was maintained even after the fall of the regime in 2003. Attempts to settle the long-standing housing, land and property issues of the hundreds of thousands of Yazidi claimants has been further inhibited by the political impasse concerning the implementation of article 140 of the 2005 Iraqi Constitution, which was originally intended to solve the status of “Kirkuk and the other disputed territories”, including the relocation of the Arabs who had been settled there by the former Government and the return of the displaced populations, a census and a referendum no later than 31 December 2007. In practice, lack of progress in implementing article 140 also froze land allocation processes in Sinjar.

In the light of the hundreds of thousands of IDPs expected to return to their homes, UN-Habitat noted in its report that the findings of the research indicated that many factors and sensitive issues needed to be addressed. In addition to the recommendations on (long-term) institutional and legal arrangements, UN-Habitat recognized that the granting of “tenure rights” endorsed through community-led verification and certification processes should be seen as a first step towards full titles. In 2017, an effective information and advocacy effort by UN-Habitat resulted in the unprecedented issuance of occupancy certificates for the owners of houses rehabilitated in al-Sinuni, which supported the long-standing property claims of Yazidis. For more on this initiative, see Principle 15.

observers have noted discriminatory patterns in returnees’ access to their housing, land and property, as (minority) groups that are facing discrimination may not be allowed to return at all, or upon return may find that their property has been destroyed or occupied.<sup>65</sup> When such cases arise, the Principles can serve as an independent normative framework to be used in supporting the non-discriminatory application of restitution laws.

Other forms of discrimination can occur during the actual restitution claims process, with certain groups facing unjustifiable and/or deliberate obstacles to the filing of claims, such as language or education barriers. In some cases, procedural requirements, such as the temporal

scope covered by the restitution mechanism, unreasonably short deadlines, the provision of numerous supporting documents or the obligation to apply in the place of origin despite security conditions for submitting restitution claims may be designed or effectively favour one ethnic group over another. Such requirements may also generally discriminate against refugees and displaced persons, whose displacement may be associated with religious or ethnic backgrounds or political views. The Principles can also be used as a checklist to ensure fairness in these processes. The enforcement of validated restitution claims may be uneven. In some cases, only members of a certain ethnic group may succeed in submitting their claims, while others are prevented from doing so.

<sup>64</sup> UN-Habitat, “Emerging land tenure issues among displaced Yazidis from Sinjar”, Iraq, November 2015. Available at <https://unhabitat.org/emerging-land-tenure-issues-among-displaced-yazidis-from-sinjar-iraq-how-chances-of-return-may-be>

<sup>65</sup> UN-Habitat, “Annual HLP incidents assessment in Conflict – Affected areas in Iraq 2016”, 18 July 2017. Available at <https://reliefweb.int/report/iraq/annual-hlp-incidents-assessment-conflict-affected-areas-iraq-2016> and Protection Cluster Iraq, “Emergency response to housing, land and property issues in Iraq”, Briefing note (December 2016), p. 3. Available at <https://docstlib.org/doc/4121818/emergency-response-to-housing-land-and-property-issues-in-iraq>

## Frequently asked questions

### What role can the international community play in preventing discrimination in restitution?

In many cases, the international community has played an indispensable role in assisting in the repeal of discriminatory laws that were being used to justify the non-enforcement of restitution decisions in favour of returnees. For example, in Bosnia and Herzegovina and in Kosovo, a series of pre-war and mid-conflict laws were repealed due to the direct involvement of the international community.<sup>66</sup> Following the Dayton Agreement, the Republika Srpska issued the “Law on Use of Abandoned Property” in 1996. This Law made repossession conditional on reciprocity in the Federation and deprived holders of occupancy rights in social housing of their rights under this Law in cases where the owner had not been living in the house in question.

These provisions were used almost exclusively against non-Serbs who were displaced from territory controlled by the Republika Srpska during the conflict. Pressure exerted by the Office of the High Representative, UNHCR and other organizations has led to the repeal of this and other discriminatory laws. In this instance, the Law was replaced by another law, which granted owners possessors and users of housing to repossess it with all the rights they had prior to 30 April 1991 or before the housing was abandoned. Regarding Kosovo, regulation 1999/10 of the United Nations Interim Administration Mission in Kosovo, entitled the “Repeal of Discriminatory Legislation Effecting Housing and Rights in Property”, led to the repeal of various housing, land and property laws that were used to discriminate against ethnic Albanians.<sup>67</sup>

### Do judicial bodies ever address these issues?

Yes, increasingly so. For instance, the United Nations Human Rights Committee, under its Optional Protocol, has determined that the denial of restitution or compensation

rights to property claimants violated the equal treatment and non-discrimination provisions of International Covenant on Civil and Political Rights. Examples of such cases are *Simunek et al. vs Czech Republic* (1995)<sup>68</sup> and *Josef Frank Adam vs The Czech Republic* (1996).<sup>69</sup> The semi-judicial Housing and Property Claims Commission of Kosovo frequently has referred to acts of discrimination as the basis for some of its decisions reaffirming housing, land and property restitution rights.<sup>70</sup>

### Are those without fixed abodes or formal rights guaranteed restitution rights?

Although traditional communities, in particular Indigenous Peoples and pastoralists, are not explicitly mentioned in Principle 3, these groups should be ensured housing, land and property rights equal to those enjoyed by other groups and not subjected to any form of discrimination on the basis of their tenure status. Restitution and reparation criteria apply equally to them, as does any other human right. Even though such groups may not have fixed abodes or legally recognized or formal ownership rights over land that they habitually use or occupy, it is important that the restitution rights of pastoralists and nomadic groups are fully addressed. This is particularly true for rights to livelihood and their livelihood resources, including their use of pastures, water resources and agricultural land in countries or areas of return or traditional use.

The Inter-American Court on Human Rights and the Inter-American Commission on Human Rights have frequently referred to Convention 169 of the International Labour Organization (ILO) and the United Nations Declaration on the Rights of Indigenous Peoples to interpret the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights. Referring to these instruments makes it possible to recognize the territorial land rights of Indigenous Peoples and their rights to communal property over their land and resources.

<sup>66</sup> United States Department of State, Bureau of European and Eurasian Affairs, “Property restitution in Central and Eastern Europe”, 3 October 2007. Available at <https://2001-2009.state.gov/p/eur/rls/or/93062.htm> E/CN.4/1994/47, p. 17; and Tatjana Josipović, “Croatian property law after EU accession – adjustment of property law to EU market freedoms”. Available at <https://dergipark.org.tr/en/download/article-file/7084>

<sup>67</sup> See S/1999/1250/Add.1, para. 52.

<sup>68</sup> Human Rights Committee, Communication No. 516/1992.

<sup>69</sup> Human Rights Committee, Communication No. 586/1994.

<sup>70</sup> Organization of American States, Inter-American Court of Human Rights, Indigenous and Tribal People’s rights over their ancestral land and natural resources. Norms and jurisprudence of the inter-American system, document OEA/SER/L/V/II, Doc.56/09.

The jurisprudence and general comments of United Nations treaty bodies were also used for States that had not signed Convention 169.<sup>71</sup> The African Court on Human and People's Rights confirmed in decisions rendered in 2010 and 2017 the customary rights of the Endorois and the Ogiek, respectively, over their traditional lands in Kenya from which they had been displaced.<sup>72</sup> In the two cases, the Court ordered the compensation and restitution

of the land to the communities. The European Court of Human Rights also confirmed that the notion of peaceful enjoyment of possession protected under the right to property is not limited to formal ownership. The Court considered as possessions the unregistered houses and land of IDPs based on their uncontested use for generations and on the fact that IDPs were drawing their livelihoods from this land.<sup>73</sup>

## Useful guidance

### United Nations and international guidance:

- Committee on Economic, Social and Cultural Rights, general comment No. 20: Non-discrimination in economic, social and cultural rights, 2 July 2009 (E/C.12/GC/20).
- Human Rights Council, “Guiding principles on security of tenure for the urban poor”, 30 December 2013 (A/HRC/25/54), p. 3.
- Organization for Security and Co-operation in Europe, Kosovo Mission, “Property rights mass claims mechanism: Kosovo experience”, June 2020. Available at [www.osce.org/files/f/documents/2/7/454179.pdf](http://www.osce.org/files/f/documents/2/7/454179.pdf)
- United Nations Interim Administration Mission in Kosovo, Regulation 2000/60 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing Property Claims Commission, 31 October 2000.
- Margaret Cordial and Knut Rosandhaug, *Post-conflict Property Restitution: The Approach in Kosovo and Lessons Learned for Future International Practice* (Leiden, Netherlands and Boston, United States of America, Nijhoff, 2009).
- Khaled Hassine, *Housing and Property Directorate in Kosovo* (Vienna, NWV, 2009).

<sup>71</sup> Organization of American States, Inter-American Court of Human Rights, Indigenous and Tribal People's rights over their ancestral land and natural resources, norms and jurisprudence of the inter-American system, document OEA/SER/L/V/II, Doc.56/09.

<sup>72</sup> African Court on Human and People's Rights, *African Commission on Human and Peoples' Rights vs Republic of Kenya*, Judgement, application No. 006/212, 23 June 2022.

<sup>73</sup> European Court of Human Rights, *Dogan and others v. Turkey*, application Nos. 8803-8811/02, 8813/02 and 8815-8819/02, 29 June 2004, para. 139.

## PRINCIPLE 4: The right to equality between men and women

- 4.1 States shall ensure the equal right of men and women and the equal right of boys and girls, to housing, land and property restitution. States shall ensure the equal right of men and women, and the equal right of boys and girls, inter alia to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.
- 
- 4.2 States should ensure that housing, land and property restitution programmes, policies and practices recognise the joint ownership rights of both male and female heads of the household as an explicit component of the restitution process, and that restitution programmes, policies and practices reflect a gender-sensitive approach.
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- 4.3 States shall ensure that housing, land and property restitution programmes, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard.

### Key issues

Gender equality refers to the equal enjoyment by women, men, girls and boys of rights, socially valued goods, opportunities, resources and rewards. Equality does not mean that men and women are the same, instead it means that their enjoyment of rights, opportunities and life chances are not governed or limited by their gender. Equality rights are widely recognized at the international and national levels and have been consistently interpreted to require the implementation of positive measures designed to eliminate the effects of *de facto* or *de jure* discrimination on the basis of sex or social roles.

The right to equality between men and women is guaranteed in article 3 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as in the Convention on the Elimination of All Forms of Discrimination against Women, and often requires the implementation of measures, including positive measures that are intended to remedy the effects of *de facto* or *de jure* discrimination on the basis of sex. For example, in its general comment No. 28 (2000), the Human Rights Committee interprets States' corresponding obligations such that "The State party must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women", and continues on to note that "articles 2 and 3 mandate

States parties to take all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions, both in the public and the private sector, which impair the equal enjoyment of rights". This general comment also notes that "The right of everyone ... to be recognized everywhere as a person before the law is particularly pertinent for women, who often see it curtailed by reason of sex or marital status".

Despite the importance of housing, land and property rights protection for women, they may have weaker security of tenure because of gender-biased implementation of laws or religious or social norms. Unmarried women and widows are at a particular disadvantage. Certain laws or social pressure may deny women's equal housing, land and property inheritance rights upon the dissolution of a marriage. The registration of land and properties is often done in the name of the head of household only, generally male, without including the names of the wife. Women may also struggle to gather the financial resources or access the credit required to buy land and houses in their own name, owing to discriminatory lending or credit policies and to high women unemployment rates in the formal sector. Without rights in, access to or control over housing, land and property, women are generally excluded from household and community decision-making processes and as a result, their interests and needs are unrepresented and unfulfilled, including during restitution processes.<sup>74</sup>

<sup>74</sup> UN-Women and OHCHR, *Realizing Women's Rights to Land and other Productive Resources*, 2nd edition (New York, United Nations, 2013); and UN-Habitat, "Women's rights to land, housing and property in post-conflict situations and during reconstruction: a global overview", United Nations Centre for Human Settlements Land Management Series No. 9, (Nairobi, 1999).



Principle 4 stipulates that housing, land and property laws and processes must not discriminate, and at the same time must also ensure the right to equality of men and women, as well as equality between boys and girls. Several grounds on which equality must be assured are noted in Principle 4.1. These include voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, and the use, control of and access to housing land and property. This Principle underscores that the right to equality also extends to children, which is consistent with the United Nations Convention on the Rights of the Child.

Principle 4.2 explicitly indicates that States should ensure that housing, land and property restitution programmes, policies and practices recognize the *joint ownership rights* of both male and female heads of the household. This provision is meant to combat sex discrimination, which may occur when only male “heads of households” are informally recognized as rights holders or when they are provided with formal title to housing or other property, leaving women without legal control over what should be treated as their common property. This bias is often visible when a woman is regarded as a head of the household only if she is single or otherwise unaccompanied by a man. To avoid this, Principle 4.2 calls for the recognition of joint ownership rights within families. As such, restitution programmes should seek to implement a gender strategy, in particular in cases in which the *status quo* effectively discriminates against women’s right to ownership, either in law or in practice. This can be ensured by conferring equal rights to women and/or joint ownership rights *before* displacement or other violation, but also remedially when restitution claims are considered by the relevant judicial bodies.

Principle 4.3 recognizes the need to implement positive measures to ensure that restitution efforts are based on equal treatment. Such actions could include the design of special programmes aimed at assisting women and girls to make restitution claims, gender-sensitivity training for officials working on housing, land and property-restitution matters, providing special outreach on restitution issues to women’s organizations or networks, and/or providing special resources to single female-headed households so that they can claim their housing, land and property restitution rights. For example, following the 2014 conflict in the Gaza strip, the NRC worked with key stakeholders to prioritize women’s housing, land and property rights during the reconstruction process. This included giving legal awareness sessions for women on

their housing, land and property rights, development of a fact sheet on women’s housing, land and property rights for stakeholders, female representation in reconstruction and planning processes and ensuring that UNRWA leases were reissued to include all adult members of the household, particularly female spouses – compared to the past practice in which only the (predominantly male) head of household was registered.<sup>75</sup>

It is significant to note that the general recommendations of the United Nations Committee on the Elimination of Discrimination against Women observe how “discriminatory or otherwise inadequate legal frameworks, complex legal systems, conflict and post-conflict settings, a lack of information and sociocultural constraints can combine to make justice inaccessible,” especially to rural women.<sup>76</sup> States Parties to the Convention on the Elimination of All Forms of Discrimination against Women must ensure that special programmes take into consideration and seek to remedy the particular discrimination, isolation, stigmatization and deprivation of older women and widows, exposing them to greater risk of ill-treatment. The Committee has also interpreted State obligations to include measures for rural women, including heads of household, living in conflict-affected areas, facing security concerns and further obstacles in enjoying their housing, land and property rights.<sup>77</sup>

Most States in the Middle East and North Africa region have ratified the Convention on the Elimination of All Forms of Discrimination against Women, although reservations to article 16 ensuring equality between men and women in matter of marriage and family are frequently cited and illustrate some of the obstacles to women’s housing, land and property rights.<sup>78</sup> Formal registration of women’s property rights remains low for reasons that vary from one country to the other.

Field research conducted in the Syrian Arab Republic by the NRC indicates that married couples do not routinely register land titles jointly, denying many married women the advantages of joint ownership. It was further noted that female refugees and IDPs were much less likely to register a property document in their name. Four out of five persons interviewed reported that the names of men alone were recorded on ownership or rental documents.<sup>79</sup> Only 4 per cent of Syrian female refugees interviewed by the NRC in Jordan and Lebanon had property in the Syrian Arab Republic registered in their name.<sup>80</sup>

<sup>75</sup> Input from the Norwegian Refugee Council.

<sup>76</sup> Committee on the Elimination of Discrimination against Women, general recommendations No. 19 (1992), No. 29 (2013), No. 30 (2013) and No. 34 (2016).

<sup>77</sup> Committee on the Elimination of Discrimination against Women, general recommendations No. 30 (2013), paras. 51, 57(d), 63, and No. 34 (2016), para. 14.

<sup>78</sup> Siraj Said and, Hilary Lim, *Land, Law and Islam, Property and Human Rights in the Muslim World* (New York and London, Zed Books, 2006).

<sup>79</sup> Input from Norwegian Refugee Council.

<sup>80</sup> Laura Cunial, “Housing, land and property in the Syrian Arab Republic”, NRC Briefing Note, May 2016. Available at [www.nrc.no/resources/reports/syrian/](http://www.nrc.no/resources/reports/syrian/)

## Opportunities for applying Principle 4

**Developing gender-responsive restitution programmes and procedures** – Principle 4 can be used as a basis for building gender-responsiveness into restitution programmes and procedures, and ensuring that women enjoy equal treatment with men in these processes. In practical terms, this means that the State and restitution partners should support special measures to enable women to achieve equality with men, including steps to ensure that women and men can experience *all* aspects of the restitution process on equal terms, including the eventual conferral of joint and equal rights to the housing, land and property over which rights were confirmed during the restitution process. Principle 4 can be operative in the development of institutions, programmes and procedures long before, during and after displacement. This can include, for instance, a presumption that the woman living in the same household as a missing or deceased person should be entitled to apply for restitution of that property. In Bosnia and Herzegovina, restitution laws provided that social housing could be repossessed by the surviving spouse or dependents of a deceased occupancy right holder, who would be issued a new contract of use.<sup>81</sup>

**Monitoring women’s housing and property restitution rights** – Any monitoring efforts of women’s enjoyment of housing, land and property restitution rights should include coverage of any sexual or gender-based violence carried out by any party, particularly when this amounts to “persecution” under refugee law, or when it otherwise violates the rights of women to return to their homes “in safety and dignity”. Many women may also be unable to return home because of physical, gender-based or other forms of violence by non-State actors.

**Working with inequitable recognition of inheritance rights** – Handbook users working in countries where women’s inheritance rights are not recognized on equal terms to men, should widely disseminate the Principles and conduct training programmes to promote their application. They can seek to uphold the Principles as an impartial normative standard based on existing human rights law and carry out advocacy efforts designed to achieve equality in rights to property and inheritance.

Many countries in the Middle East and North Africa region have legal systems that rely on Islamic law (Sharia)

principles for inheritance and family matters. While Sharia provisions on inheritance grants half of a male relative’s share at the same level of kinship,<sup>82</sup> they tend to be more favourable than social norms wrongly pretending to derive from Sharia. It is, therefore, important for actors supporting inheritance rights of women to use the approach that is the most favourable to women in practice. If equal inheritance rights cannot be obtained during the processes, changing discriminatory laws should be pursued as a goal and, when necessary, Sharia inheritance principles that are the most advantageous for protecting women should be used in practitioners’ advocacy. Furthermore, holistic estate planning approaches should be promoted to ensure that women can benefit from the broader range of options, which can complement their lesser inheritance rights, including distributing the real estate of the family through wills and gifts, the enhancement of access to credit and finance for women, and the promotion of joint marital property arrangements.<sup>83</sup>

**Religion and women’s housing, land and property rights** – Many countries in the Middle East and North Africa region are influenced by Islamic principles and practices at the statutory or customary level. Islamic law provides a range of rights to property to Muslim women (right to buy, own, hold, use, administer, inherit and sell property). Women are entitled to equal treatment with men in relation to purchasing property with their own earnings, or to dispose of gifts they receive, notably through *mahr*, a payment made by a husband to his wife as a result of their marriage. The typical inheritance share for women, even if unequal, represents an important source of access to land for women who benefit from smaller but fixed inheritance rights.

Other aspects of Islamic law related to land contains features that can facilitate women’s access to housing, land and property: the possibility for the owner to pass up to one third of his/her property through a will; and the use of the Islamic endowment or *waqf*, which allows an owner to permanently settle a property, its usufruct or income to the use of general welfare or to the benefit of certain groups or family members. Under the Islamic approach, the role of the State is to administer land (that belongs to God), for the community’s welfare. Compulsory charity or *zakat*, one of the key religious obligations, recognizes landless people as a primary beneficiary group. This supports access to land and ownership for marginalized groups, including women.<sup>84</sup>

<sup>81</sup> UN-Habitat, *Housing and Property Rights in Bosnia and Herzegovina, Croatia and Serbia and Montenegro* (Nairobi, 2005), p. 43.

<sup>82</sup> John R. Bowen, “Gender, Islam and law”, WIDER working paper 2017/52 (July 2017), p. 10. Available at [www.wider.unu.edu/publication/gender-islam-and-law](http://www.wider.unu.edu/publication/gender-islam-and-law)

<sup>83</sup> UN-Habitat, *Women and Land in the Muslim World* (Nairobi, 2018).

<sup>84</sup> The information from this section on Islamic law and women’s housing, land and property rights is from Said Sirja and others, “Islamic principles and land, opportunities for engagement” (UN-Habitat, 2011). Available at <https://unhabitat.org/islamic-principles-and-land-opportunities-for-engagement>

## Box 6: Gender equality and housing, land and property rights: the example of Tunisia

Gender equality and housing, land, and property rights are interconnected questions that are critical for achieving social justice, economic development, and human rights. Ensuring gender equality in housing, land, and property rights is essential as unequal access and control over housing, land and property rights can exacerbate gender-based discrimination, violence, and inequality.<sup>85</sup> Housing, land and property rights of women relate closely to discrimination against women in political and public life, in health and safety and in family and cultural life. For women to be able to enjoy their housing, land and property rights in practice, a broad and multifaceted approach is required. In particular, it is essential to change those laws and social norms that directly or indirectly impose barriers to women's right to own and access property and land. A key precondition, for instance, for women to exercise their housing, land and property rights is their ability to appear and act individually – *personal in nature* – as rights holder.

An illustrative example is the Personal Status Code of 1956 of Tunisia, which stipulates the principle of equality between men and women related to citizenship, the right to work, eliminating polygamy, regulating divorce, defining a minimum legal age for marriage and criminalizing infringements.<sup>86</sup> Equality of men and women in inheritance is another precondition. On 25 November 2018, Tunisia was the first country in the region to adopt a bill in its Cabinet to establish gender parity in inheritance while allowing people to opt for the Islamic law interpretation in their wills if they did not want parity. Regrettably, that law was later rejected by conservative forces in parliament in 2019.<sup>87</sup>

More needs to be done to change existing social norms that continue in practice to impede the women's exercise of their housing, land and property rights, particularly in rural Tunisia, and to raise their awareness about their rights, including their rights to recourse.<sup>88</sup>

<sup>85</sup> For an overview of specific gender-responsive housing, land and property rights relevant resolutions and jurisprudence see Scott Leckie and Khaled Hassine, *The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, a Commentary* (Leiden, Netherlands, Martinus Nijhoff Publishers, 2016), pp. 26 et seq.

<sup>86</sup> See, for example, Concluding Observations Tunisia. Available at [www.ohchr.org/english/bodies/cedaw/docs/co/TunisiaCO27.pdf](http://www.ohchr.org/english/bodies/cedaw/docs/co/TunisiaCO27.pdf) and United Nations, Economic and Social Commission for Western Asia (ESCWA) and others, *Tunisia Gender Justice & Law* (New York, UNDP, 2018).

<sup>87</sup> OHCHR, "UN Human Rights chief warmly welcomes move towards equal inheritance rights for women in Tunisia", press release, 27 November 2018. Available at [www.ohchr.org/en/press-releases/2018/11/un-human-rights-chief-warmly-welcomes-move-towards-equal-inheritance-rights#:~:text=ENEVA%2FTUNIS%20\(27%20November%202018,an%20example%20for%20the%20region](http://www.ohchr.org/en/press-releases/2018/11/un-human-rights-chief-warmly-welcomes-move-towards-equal-inheritance-rights#:~:text=ENEVA%2FTUNIS%20(27%20November%202018,an%20example%20for%20the%20region) and for the background, see the Individual Freedoms and Equality Committee (COLIBE, in French Commission des libertés individuelles et de l'égalité), which is a commission created by the president of Tunisia, Beji Caid Essebsi, on 13 August 2017. The Committee was mandated to prepare a report on legislative reforms concerning individual freedoms and equality in accordance with the Constitution of 2014 and international human rights standards. For more information see [http://adliin.org/wp-content/uploads/download-manager-files/rapport-colibe-fr-1-11-2019\\_1.pdf](http://adliin.org/wp-content/uploads/download-manager-files/rapport-colibe-fr-1-11-2019_1.pdf) and [https://colibe.org/la-commission/lang\\_en/](https://colibe.org/la-commission/lang_en/)

<sup>88</sup> See International Fund for Agricultural Development (IFAD) and International Labour Organization (ILO), "Women's and youth empowerment in rural Tunisia", *Impact Report Series*, No. 11 (May 2018); and DAI, "Strengthening women's control over land: inheritance reform in Tunisia" (n.d.). Available at <https://dai-global-developments.com/articles/strengthening-womens-control-over-land-inheritance-reform-in-tunisia/>

## Frequently asked questions

### What are the consequences of gender-discriminatory inheritance regimes?

Inheritance rights are particularly important in housing, land and property restitution processes following a conflict or disaster. In many post-conflict settings, it is common for widows to return to their original homes only to find them occupied by members of the deceased husband's family – brothers, uncles, male cousins – who claim rights over property based on prevailing inheritance regimes. Such practices can have severe consequences for women and lead to homelessness and landlessness, general housing and food insecurity, increased vulnerability to violence and social isolation, and loss of social security. Many countries maintain formal and customary laws, and have practices that entrench unequal inheritance rights for men and women. It is important for practitioners to be conscious of the impact of the existing inheritance regimes in areas where restitution efforts are underway. The Principles can be used as a guiding tool to promote rights-based approaches to the question of inheritance.

### In which legal sectors are gender-discriminatory inheritance regimes most likely to be regulated?

While unfair inheritance (or succession) rights often manifest with widows being unable to exercise restitution rights over an original home or land parcel, the types of statutory, religious and customary laws regulating these practices vary considerably from country to country, as well as from village to village, regardless of religious affiliation. The legal domains include, among other topics, norms concerning marriage, succession, family codes, personal laws, civil codes, laws on estates and wills, and customary marriage arrangements. Handbook users should familiarize themselves with these and other legal sectors in the country where they are working to determine the nature and extent of any inequitable inheritance rights provisions.

## Useful guidance

### United Nations and international guidance:

- OHCHR, *Faith for Rights Toolkit*. Available at <https://www.ohchr.org/sites/default/files/documents/press/faith4rights-toolkit.pdf>
- OHCHR, “18 Commitments on “Faith for Rights”. Available at [www.ohchr.org/sites/default/files/Documents/Press/21451/18CommitmentsonFaithforRights.pdf](http://www.ohchr.org/sites/default/files/Documents/Press/21451/18CommitmentsonFaithforRights.pdf)
- Committee on Economic, Social and Cultural Rights, general comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights, 11 August 2005 (article 3 of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/2005/4).
- OHCHR, Human Rights resolution 2005/25 on women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing, 2005.
- FAO, *Governing Land for Women and Men, a Technical Guide to Support the Achievement of Responsible Gender-Equitable Governance of Land Tenure* (Rome, 2013).
- Ombretta Tempa, “Women, land and peace: Sustaining peace through women's empowerment and increased access to land and property rights in fragile and conflict affected context: key messages” (Nairobi, UN-Habitat, 2021).
- OHCHR and UN-Women, *Realizing Women's Rights to Land and other Productive Resources*, 2nd edition (New York and Geneva, 2020). Available at [www.ohchr.org/sites/default/files/Documents/Publications/RealizingWomensRightstoLand\\_2ndedition.pdf](http://www.ohchr.org/sites/default/files/Documents/Publications/RealizingWomensRightstoLand_2ndedition.pdf)

- OHCHR and UN-Women, *Women and the Right to Adequate Housing*, second edition (United Nations publication, 2013). Available at [www.ohchr.org/sites/default/files/Documents/publications/WomenHousing\\_HR.PUB.11.2.pdf](http://www.ohchr.org/sites/default/files/Documents/publications/WomenHousing_HR.PUB.11.2.pdf)
- Report by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, 27 February 2006 (E/CN.4/2006/118, 27).
- Security Council resolution 1325 on women peace and security , 31 October 2000.
- Ombretta Tempa, Siraj Sait and Rafic Khouri, *Women and Land in the Muslim World* (UN-Habitat, Nairobi, 2018).
- UN-Habitat, “Women’s rights to land, housing and property in post-conflict situations and during reconstruction: a global overview”, United Nations Centre for Human Settlements Land Management Series No. 9, (Nairobi, 1999).
- UN-Habitat, UAWC and Global Land Tool Network, *Land, Women Empowerment and Socioeconomic Development In the Arab Region* (Nairobi, UN-Habitat, 2023).

#### Other sources:

- NRC, “Life can change: securing housing, land and property rights for displaced women” (2013). Available at <https://reliefweb.int/report/world/life-can-change-securing-housing-land-and-property-rights-displaced-women>
- Siraj Said and, Hilary Lim, *Land, Law and Islam, Property and Human Rights in the Muslim World* (New York and London, Zed Books, 2006). See chapter on Muslim women and property.

## PRINCIPLE 5: The right to be protected from displacement

- 5.1 Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.
- 
- 5.2 States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards and should extend these protections to everyone within their legal jurisdiction or effective control.
- 
- 5.3 States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.
- 
- 5.4 States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States also shall ensure that individuals, corporations and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.

### Key issues

Whereas this Handbook focuses mainly on the issue of providing a remedy (such as restitution), to persons already dispossessed and/or arbitrarily displaced, Principle 5 reiterates the need to *prevent* displacement, including forced evictions. This is consistent with the spirit and letter of numerous international instruments and policy guidelines, including the Guiding Principles on Internal Displacement, which note, in Guiding Principle 5, that “[a]ll authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons”. In Guiding Principle 6, the obligation of authorities to protect individuals from arbitrary displacement is stated and some of the conditions under which this obligation applies are listed, including displacement that aims to alter the demographics of the affected populations, displacement during armed conflict when it is not required for the security of civilians nor imperative military reasons, due to large-scale development projects not justified by compelling and overriding public interests, evacuations not required by the safety and health of those affected in context of disasters,

or the use of displacement as a collective punishment.<sup>89</sup> While the prohibition of arbitrary displacement in armed conflict is explicit in international humanitarian law, it is only implied in certain human rights law provisions, such as the right to freedom of movement and choice of residence, freedom from interference with one’s home and the right to adequate housing.<sup>90</sup>

The Kampala Convention also recognizes the right not to be arbitrarily displaced.<sup>91</sup> Article III recalls the responsibility of State parties to prohibit and prevent arbitrary displacement, as well as the underlying factors that drive displacement, such as political, social, cultural and economic exclusion, and ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international law. It also requires State parties to ensure the accountability of non-State actors, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts, notably in relation to the exploration and exploitation of economic and natural resources leading to displacement (article III). The Kampala Convention also calls on States to prevent and avoid conditions that might lead to the arbitrary

<sup>89</sup> See E/CN.4/1998/53/Add.2.

<sup>90</sup> Walter Kälin, “Guiding principles on internal displacement: annotations”, Studies in Transnational Legal Policy, No. 38 (Washington, D.C., The American Society of International Law). Available at [www.brookings.edu/wp-content/uploads/2016/06/spring\\_guiding\\_principles.pdf](http://www.brookings.edu/wp-content/uploads/2016/06/spring_guiding_principles.pdf)

<sup>91</sup> Romola Adelo, “The Kampala Convention and the right not to be arbitrarily displaced”, *Forced Migration Review*, No. 59 (October 2018).

displacement of persons through ensuring respect for international human rights and humanitarian law, devise early warning systems in areas of potential displacement and establish and implement disaster-risk reduction strategies and emergency and disaster preparedness measures to prevent, mitigate and respond to disaster-induced displacement and outlines the prohibited categories of arbitrary displacement that are included (article IV). State Parties are also obliged to prevent displacement resulting from development projects led by public or private actors (article X).

Principle 5.2 encourages States to incorporate protection and preventive measures against displacement in domestic law. This echoes a requirement of domestic application under international treaty law.<sup>92</sup> Principle 5.3 refers to the prohibition of forced eviction and the demolition of homes and agricultural areas and the confiscation or expropriation of land as a punitive measure.<sup>93</sup> Guaranteeing secure and legally protected tenure is an integral element of the right to adequate housing and pertinent to preventing and protecting people from displacement and to achieving a sustainable solution. In its general comment No. 4 (1991), the Committee on Economic, Social and Cultural Rights stipulates that States must “take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups”. Plausible and verifiable tenure claims, even without formal documentation, must be respected, protected and fulfilled. This is particularly important as many refugees and displaced persons have lost or never had documentation, and because land registries are often damaged during conflicts or disasters.

The practice of forced eviction deserves special consideration as one of the causes and means of displacement. The right to be protected from forced eviction is implicit in the human right to adequate housing and in the human right to privacy and respect for the home. Forced evictions can only be justified in exceptional circumstances, in which case they must be carried out in accordance with the relevant principles of international law. Forced eviction of refugees and displaced persons is a common occurrence. For instance, thousands of Syrian refugees have been reportedly forcibly evicted from homes in Lebanon due to, among other reasons, their inability to pay rent. Municipalities have also been responsible for forced evictions of refugees under the guise of maintaining public order.

The physical and psychological impact of evictions are far reaching, felt particularly hard by children and includes the feeling of insecurity, the lack of host community acceptance, and absence of trust between the refugee and the host community.<sup>94</sup>

A related example is the displacement and forcible transfer of Palestinian communities in the West Bank, which is well-documented.<sup>95</sup> The practice consists of a systematic and institutionalized regime of home demolitions, evictions, land confiscation, restricted access to land, settlement expansion and transfer of the occupying population, namely Israeli settlers, into the occupied territory, namely East Jerusalem and Area C of the West Bank. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) reports that between 2009 and July 2023, more than 10,000 Palestinian structures were demolished in the West Bank, 27 per cent of which were inhabited structures, affecting more than 490,000 persons.<sup>96</sup>

<sup>92</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 9 (1998).

<sup>93</sup> See Commission on Human Rights resolutions 1993/77 and 2004/28.

<sup>94</sup> Norwegian Refugee Council and Save the Children Lebanon, “Evictions in Beirut and Mount Lebanon: rates and reasons” (2014). Available at <https://library.alnap.org/system/files/content/resource/files/main/425-evictions-in-beirut-and-mount-lebanon-final-17dec2014.pdf>

<sup>95</sup> See for example, Norwegian Refugee Council “A guide to housing, land and property law in Area C (February 2012). Available at [www.nrc.no/resources/reports/a-guide-to-housing-land-and-property-law-in-area-c-of-the-west-bank/](http://www.nrc.no/resources/reports/a-guide-to-housing-land-and-property-law-in-area-c-of-the-west-bank/)

<sup>96</sup> OCHA, “Breakdown on data on demolition and displacement in the West Bank, Data on West Bank demolitions” (accessed 8 December 2023). Available at <https://www.ochaopt.org/data/demolition>

### Box 7: Can “public interest” and similar concepts justify any actions resulting in displacement and evictions?

Decisions based on “public interest”, “general welfare”, “public welfare”, “public good” and similar concepts have been commonly used to justify expropriations, evictions and displacements. Yet, applying them needs to be in line with the protection and promotion of human rights and the rule of law:

- Only exceptional circumstances justify the use of the “public interest” argument;
- Be “reasonable” and carried out as a last resort when no alternative is available;
- Be “proportional” (evaluation of the decision’s impact on and potential benefit for various groups, including through an eviction impact assessment);
- Need to promote general welfare and show evidence of such an outcome;
- Non-discriminatory in law and in practice;
- Defined in law and “foreseeable”;
- Subject to control to evaluate their conformity with the constitution and the State’s international obligations;
- Information on decisions and the criteria for their justification need to be public and transparent;
- Subject to consultation and participation;
- Effective recourse mechanisms should be available for those directly or indirectly affected.<sup>97</sup>

Post-conflict reconstruction and urban renewal projects may cause displacement when expropriations are done in a way that amounts to forced eviction without adequate compensation or respect of other procedural requirements, such as those mentioned in the 2007 Basic Principles and Guidelines on Development-based Evictions and Displacement.<sup>98</sup> For instance, in the Syrian Arab Republic, several urban laws issued prior and during the conflict have been issued to replace informal settlements with urban renewal projects. These laws have resulted in evictions and expropriations of informal settlements without adequate compensation and under procedures and deadlines that make it very difficult for Syrian refugees and displaced persons to protect and defend their rights. Such expropriations are not only

a source of displacement, but they also are an obstacle to return for those who have not claimed their right to compensation during the expropriation process. However, it may also be problematic for those who manage to follow the procedure. As compensation is based on the value of the property before the urban renewal project and because it has been given in the form of a share into the new reconstructed property, it is very likely that the share will not be sufficient for those expropriated to remain in the same area.<sup>99</sup> In this context, stakeholders involved in the processes, especially the international community, donors and private businesses, need to be careful not to contribute to human rights violations through their actions and take the required preventive measures.

<sup>97</sup> OHCHR and UN-Habitat, “Fact Sheet No. 25 (Rev.1) on forced evictions and human rights”, May 2014.

Available at [www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-25-rev-1-forced-evictions-and-human-rights](http://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-25-rev-1-forced-evictions-and-human-rights)

<sup>98</sup> See A/HRC/4/18, annex 1.

<sup>99</sup> For more information on expropriation and Law 10 in the Syrian Arab Republic, see Khaled Al-Helou, Riyad Ali and Anwar Majanni, *The Property Issue and its Implications for Ownership Rights in Syria* (Istanbul, The Day After, 2019).



### Box 8: Key articles of the United Nations Declaration on the Rights of Indigenous Peoples<sup>100</sup>

#### Article 10

Indigenous Peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the Indigenous Peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

#### Article 28

1. Indigenous Peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

### Box 9: Key articles of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas<sup>101</sup>

#### Article 12.2

States shall provide for non-discriminatory access, through impartial and competent judicial and administrative bodies, to timely, affordable and effective means of resolving disputes in the language of the persons concerned, and shall provide effective and prompt remedies, which may include a right of appeal, restitution, indemnity, compensation and reparation.

#### Article 17.4

Peasants and other people working in rural areas have the right to be protected against arbitrary and unlawful displacement from their land or place of habitual residence, or from other natural resources used in their activities and necessary for the enjoyment of adequate living conditions. States shall incorporate protections against displacement into domestic legislation that are consistent with international human rights and humanitarian law. States shall prohibit arbitrary and unlawful forced eviction, the destruction of agricultural areas and the confiscation or expropriation of land and other natural resources, including as a punitive measure or as a means or method of war.

<sup>100</sup> See General Assembly resolution 61/295.

<sup>101</sup> See A/HRC/RES/39/12.

## Opportunities for applying Principle 5

**Analysing the underlying causes of displacement** – Handbook users can refer to Principle 5 when exploring the causes of displacement and confirming the legitimacy of restitution claims. Given that restitution reverses arbitrary or unlawful displacement and restores the original situation as far as possible, understanding the causes of displacement is vital in establishing the potential scope and modalities of any restitution process. As refugees and displaced persons are often forced to flee their original homes and lands because of forced evictions, or other gross violation of human rights, this will ultimately strengthen any eventual restitution claims with the full entitlements of reparation.

**Carrying out protection measures** – Protecting people, including refugees and displaced persons, from arbitrary forced eviction, the destruction of their homes or the confiscation of their land is a key function of those engaged in protection of refugees and displaced persons. Principle 5 refers to protection against forced eviction and resulting displacement. Handbook users can refer to its provisions when assisting States, in accordance with Principle 5.2, to bring national laws and the performance of security forces into conformity with international standards regulating

these practices. This Principle also supports other lawful means and tools for assisting inhabitants to resist planned or threatened forced evictions.

**Implementing restitution rights** – In contrast to the general prohibition on forced evictions that inevitably lead to massive displacement, non-arbitrary and/or lawful evictions can be necessary to enforce certain restitution claims particularly when housing, land and property belonging to refugees or displaced persons are illegally occupied by secondary occupants. While lawful evictions should be carried out only as a last resort, enforcing the restitution rights of a refugee or displaced person with a legitimate restitution claim, confirmed by an impartial body, may require the eviction of the current occupant of the home or land concerned. This is the case when a secondary occupant of a refugee's home, for instance, is found to have no rights over the refugee's home, and either has access to another home or land plot or is assisted in finding some form of adequate alternative accommodation. This type of eviction is not prohibited under international human rights law if all the necessary legal and procedural safeguards protecting the secondary's occupant housing rights and other human rights are in place. Of particular importance is that the evictees are not made homeless and put in a situation of vulnerability (see also Principle 17).

### Box 10: The Guiding Principles on Business and Human Rights: implementing the United Nations “Protect, Respect and Remedy” Framework<sup>102</sup>

Development projects and business activities including large-scale development projects related to infrastructure, renewable energy, conservation of nature and the extractive industry may result in dispossession because of abusive expropriation, forced evictions and displacement. The Guiding Principles on Business and Human Rights extend guidance to States and businesses on how to effectively prevent and address adverse impacts on human rights involving business activity, including in relation to housing, land and property.

Their unanimous endorsement by the Human Rights Council in 2011 helped to solidify the Guiding Principles as the internationally accepted framework for enhancing standards and practices regarding business and human rights. They apply to all business enterprises, regardless of their size, sector, location, ownership and structure and are grounded in the recognition of the following:

1. States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
2. The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
3. The need for rights and obligations to be matched to appropriate and effective remedies when breached.

The Guiding Principles emphasize the duty of the State to provide a regulatory environment conducive to businesses' respect for human rights, including in relation to corporate laws, and laws governing access to land. An adequate legal framework contributes towards protecting against human rights abuses by third parties, including business enterprises. The Guiding Principles note that failure to enforce existing laws that directly or indirectly regulate businesses' respect for human rights is often a significant legal gap in State practice.

<sup>102</sup> OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (HR/PUB/11/04).

## Frequently asked questions

### What positive measures can be proposed to strengthen protection against forced evictions?

Handbook users can attempt to generate support for expanding national legislative recognition of housing, land and property rights by ensuring that explicit protections against forced evictions are included within domestic law. A range of national constitutions and laws throughout the world guarantee such rights and protections. In the Middle East and North Africa region, for example, article 63 of the 2014 Constitution of Egypt provides that “[a]ll forms and types of arbitrary forced displacement of citizens shall be prohibited and shall be a crime that is not subject to a statute of limitations.”<sup>103</sup> Beyond constitutional and legislative provisions, further efforts may be needed to encourage governments to implement such prohibitions. For instance, advocacy efforts by international actors could encourage governments to support local and national moratoriums on forced evictions and to issue instructions to authorities to implement measures to prevent forced eviction.

### What is security of tenure and how does it relate to restitution rights?

Security of tenure is the central regulatory means by which people can be protected against displacement (including forced evictions), harassment or other threats. As one of the core contents of the right to adequate housing, security of tenure – whether formal, informal, customary or in other forms – should be sufficiently strong to protect people against any form of arbitrary or unlawful displacement. Although security of tenure is most associated with the ownership of property or land, it can include a wide variety of tenure arrangements under which security of tenure rights are, in fact, recognized. These include, among others, rental (public and private) accommodation, cooperative housing, long-term possession or customary occupation of land or property, de facto recognition of security of tenure, (but without legal status), recognition of security of tenure, but without any form of tenure regularization, temporary occupancy permits and temporary non-transferable leases and long-term leases. Handbook users can advocate flexible interpretations of security of tenure rights and seek to ensure that claimants who successfully exercise their restitution rights are also accorded appropriate tenure protection upon repossession.

## Useful guidance

### United Nations and international guidance:

- Committee on Economic, Social and Cultural Rights, general comment No. 7: The right to adequate housing (article 11.1): forced evictions, 20 May 1997, paras. 15–16, contained in document E/1998/22, annex IV.
- OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (United Nations publication, 2011). Available at [www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](http://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)
- Report of the Special Rapporteur on the human rights of internally displaced persons, 16 July 2021 (A/76/169).
- United Nations Human Rights Council “Guiding principles on security of tenure for the urban poor,” preambular para. 1, in “Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context”, 30 December 2013 (A/HRC/25/54), pp. 3–4.
- OHCHR and UN-Habitat, “Fact Sheet No. 25 (Rev. 1) on forced evictions and human rights”, May 2014. Available at <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-25-rev-1-forced-evictions-and-human-rights>

<sup>103</sup> Constitution of the Arab Republic of Egypt, 15 January 2014.

- Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, 5 February 2007 (A/HRC/4/18).
- OHCHR and UN-Habitat, *Assessing the Impact of Eviction Handbook* (Nairobi, UN-Habitat, 2014).
- Jean du Plessis, *Losing Your Home, Assessing The Impact Of Eviction* (Nairobi, UN-Habitat, 2011).
- Jean du Plessis and others, “The continuum of land rights”, paper prepared for presentation at the 2016 World Bank Conference on Land and Poverty, Washington D. C, 14-18 March 2016. Available at [www.researchgate.net/publication/303697119\\_The\\_continuum\\_of\\_land\\_rights\\_approach\\_to\\_tenure\\_security\\_consolidating\\_advances\\_in\\_theory\\_and\\_practice](http://www.researchgate.net/publication/303697119_The_continuum_of_land_rights_approach_to_tenure_security_consolidating_advances_in_theory_and_practice)

#### Other sources:

- COHRE, *Sources No. 3 Forced Evictions and Human Rights: A Manual for Action* (Geneva, 1999).
- Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford, United Kingdom, Oxford University Press, 2006).
- Maria Stavropoulou, “The right not to be displaced,” *American University Journal of International Law and Policy*, vol. 9, No. 3 (1994).
- Aun Shawkat al-Khasawneh, Aun Shawkat and Ribot Hatano, “The human rights dimensions of population transfer, including the implantation of settlers”, 6 July 1993 (E/CN.4/Sub.2/1993/17).
- Michèle Morel, “The right not to be displaced in international law” (Cambridge, United Kingdom, Intersentia, 2014).
- NRC, “A guide to housing, land and property law in Area C”, February 2012. Available at [www.nrc.no/resources/reports/a-guide-to-housing-land-and-property-law-in-area-c-of-the-west-bank/](http://www.nrc.no/resources/reports/a-guide-to-housing-land-and-property-law-in-area-c-of-the-west-bank/)

## PRINCIPLE 6: The right to privacy and respect for the home

- 6.1 Everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home.
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- 6.2 States shall ensure that everyone is provided with safeguards of due process against arbitrary or unlawful interference with his or her privacy and his or her home.

### Key issues

The rights to privacy and respect for the home are fundamental human rights that can be linked directly to the prevention of displacement and restoration of these rights should they be subject to violation. Article 12 of the Universal Declaration on Human Rights provides that “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.” Article 17 of the International Covenant on Civil and Political Rights contains the same clause, while article 21 of the Arab Charter of Human Rights guarantees that: “(a) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or his reputation; and (b) Everyone has the right to the protection of the law against such interference or attacks”.<sup>104</sup>

The right to enjoy one’s existing home peacefully entails that authorities may not prevent a person from entering or living in her/his home without a justifiable reason and they should not enter without the residents’ permission. This right is applicable regardless of the type of tenure of the home. It also calls for public authorities, including law enforcement officials, to protect against violation of this right by third parties. Exceptional situations may arise in which public authorities may interfere with the right to respect for private and family life, home and correspondence. Only when the authorities can demonstrate that their action is lawful, necessary and proportionate to achieve the legitimate purpose.

### Opportunities for applying Principle 6

**Analysing the causes of displacement** – As with the other rights reaffirmed in section III of the Principles, the right to be protected against the arbitrary or unlawful interference with one’s home constitutes a means for preventing displacement and grounds for securing restitution if this right is abused either in an individual or collective context. Handbook users, when analysing the causes of displacement and the forces responsible for it, can aim to determine if violations of Principle 6 have taken place and identify measures that may be required to remedy such infringements. Particular attention should be paid to determining whether:

1. A fair balance was struck in justifying the displacement in question;
2. Such interference was in accordance with law;
3. The rationale behind the displacement pursued a legitimate social aim in the public interest;
4. Due process rights were available and accessible;
5. Just and satisfactory compensation was paid.

If any of these elements are missing, (as they invariably will be in the context of forced eviction or displacement), the pursuit of restitution rights of those displaced on these grounds would be fully justified.

**Monitoring the enforcement of restitution decisions** – Handbook users should also bear in mind the privacy rights provisions of Principle 6 when monitoring the enforcement of restitution decisions issued by restitution bodies or local courts. Principle 6.2 protects due process rights and, as such, all refugees or displaced persons with legitimate restitution claims must be able to put their claims before an independent and impartial adjudicating body as a means to securing the enforcement of these rights.

<sup>104</sup> Council of the League of Arab States, Arab Charter on Human Rights (2004).

## Frequently asked questions

### How do the principles of proportionality and fair balance relate to housing, land and property restitution rights?

The legal doctrines of *proportionality* and *fair balance* are vital in determining whether interferences with housing, land and property rights can be justified under human rights law, and if the Principles are applicable in such instances. If State authorities arbitrarily revoke privacy rights and respect for the home guarantees, or apply forms of discrimination, that would be classified as *disproportionate*, and thus violate international law. Similarly, the *fair balance doctrine* stipulates that, in determining the compatibility of a certain act by a State regarding housing and property issues, any interference in the exercise of these rights must strike a *fair balance* between the aim sought to be achieved and the nature of the act. This Principle is present throughout major legal systems.

The European Court of Human Rights has issued several judgments on this question, including the following

pronouncement in the *Lithgow Case* (1986), which considered the legitimacy of actions by the State resulting in the deprivation of property.<sup>105</sup> Three years later, the Court stated that “inherent in the whole of the [European Convention on Human Rights] is a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights.”<sup>106</sup>

In its general comment No. 7 (1997), the Committee on Economic, Social and Cultural Rights concluded that “[f]orced evictions are prima facie incompatible with the Covenant”. The Committee subsequently clarified through its jurisprudence that forced evictions “can only be justified in the most exceptional circumstances. The relevant authorities must ensure that they are carried out in accordance with legislation that is compatible with the Covenant and in accordance with the general principles of reasonableness and proportionality by weighing up the legitimate objective of the eviction and its consequences for the evicted persons”.<sup>107</sup> It has also provided the requirements for an eviction to be justifiable.<sup>108</sup>

## Useful guidance

### United Nations and international guidance:

- Human Rights Committee, general comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (article 17), 8 April 1988.
- Report of the Special Rapporteur on adequate housing a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Guiding Principles on security of tenure for the urban poor, 30 December 2013 (A/HRC/25/54).
- General Assembly resolution 71/256, New Urban Agenda, 23 December 2016.

<sup>105</sup> European Court of Human Rights, *Lithgow v. United Kingdom* 9006/80; 9262/81; 9263/81 (1986) 8 EHRR 329, *Thomas Reuters Practical Law*, Judgement, 8 July 1986.

<sup>106</sup> European Court of Human Rights, *Soering v. United Kingdom* (1989) 11, Judgement, 19 January 1989. *European Human Rights Reports* 439, para. 89.

<sup>107</sup> See E/C.12/69/D/85/2018, paras. 8.2–8.4.

<sup>108</sup> *Ibid.*

## PRINCIPLE 7: The right to peaceful enjoyment of possessions

7.1 Everyone has the right to the peaceful enjoyment of his or her possessions.

7.2 States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general Principles of international law. Whenever possible, the “interest of society” should be read restrictively, so as to mean only a temporary or limited interference with the right to peaceful enjoyment of possessions.

### Key issues

The right to the peaceful enjoyment of possessions is one of the most frequently violated rights when displacement occurs. This is stated in the European Convention on Human Rights (article 1), while “property rights” provisions in the Universal Declaration on Human Rights (article 17) refer to a human right “to own property alone as well as in association with others” and that “[no] one shall be arbitrarily deprived of his property.” This right is also stipulated in Convention on the Elimination of All Forms of Racial Discrimination (article 5(d)(v)), International Convention on the Elimination of All Forms of Discrimination against Women (article 16(1)(h)) and other international instruments. Article 14 of the African Charter on Human and Peoples Rights provides that “[t]he right to property shall be guaranteed. It may only be encroached upon in the interest of public need, or in the general interest of the community and in accordance with the provisions of appropriate laws”<sup>109</sup> The African Charter of Human and Peoples Rights does not discriminate by type of tenure, nor limit the right to individuals. Article 21.2 provides that “[i]n case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation”.<sup>110</sup> The Arab Charter of Human Rights also enshrines a human right to property, but only in the sense of private property and ownership. Article 31 states that “[e]veryone has a guaranteed right to own private property and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property.”

With respect to refugees’ moveable and immovable property, the 1951 Convention Relating to the Status of Refugees (Refugee Convention) provides the necessary guidance. Refugees’ property rights are upheld irrespective of location, type of tenure or other status within the State Party’s jurisdiction and territory of effective control.<sup>111</sup> Article 13 stipulates that States should “accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards to the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.”

The Refugee Convention prohibits discrimination against refugees with respect to property or type of tenure, obligating States to respect full property rights and to protect them from violations by any party within the State’s jurisdiction or territory of effective control, such as theft and confiscation.<sup>112</sup>

In the context of internal displacement, Principle 21 of the Guiding Principles on Internal Displacement takes a comparable approach, recognizing that “[no] one shall be arbitrarily deprived of their property and possessions. The property and possessions of all internally displaced persons shall in all circumstances be protected, in particular, against the following acts: pillage; direct or indiscriminate attacks or other acts of violence; being used to shield military operations or objectives; being made the object of reprisal; and being destroyed or appropriated as a form of collective punishment. Property and possessions

<sup>109</sup> Organisation of African States, [Banjul] Charter on Human and Peoples’ Rights (ACHPR), adopted 27 June 1981, document CAB/LEG/67/3 rev. 5.

<sup>110</sup> Council of the League of Arab States, Arab Charter on Human Rights (2004).

<sup>111</sup> Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, 3rd edition (Oxford, United Kingdom, Oxford University Press, 2007), International protection, p. 6; and James C. Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge, United Kingdom, Cambridge University Press, 2014), 3.3.5 “Adequate standard of living”, pp. 228–234.

<sup>112</sup> See General Assembly resolution 429 (V).

left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use”.<sup>113</sup> Convention No. 169 concerning Indigenous and Tribal Peoples in independent countries provides that “[th]e rights of ownership and possession of the peoples concerned over the lands [that] they traditionally occupy shall be recognised...[and that] whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist”.<sup>114</sup>

Handbook users need to be aware of the subtle distinctions between the peaceful enjoyment of possessions and property rights. While included in the Universal Declaration of Human Rights, the “right to own property” is not mentioned in the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights because, historically, this right was viewed as reflecting certain, largely Western, values of acquisition that did not (and possibly still do not) find resonance in certain parts of the world. The different views on the question are one of the reasons why the term “housing, land and property rights” is habitually used to describe these issues, as it is more appropriate for, and relevant to, all legal systems and country settings. While the rights to adequate housing and land are intended to ensure that *all* persons have a safe and secure place to live in peace and dignity, including non-owners of property, the term “right to property” is particularly important in terms of protecting the rights of persons who already own property, in particular against the arbitrary deprivation on one’s property or home.

In addition, many of the countries in which restitution programmes are being implemented recognize various forms of ownership, distinct from Western notions of “private property”, which may be more social in nature, including collective, customary and common ownership, or regard land as being held in “stewardship”. All legitimate tenure rights holders and their rights should be recognized and respected.<sup>115</sup>

A simple restitution formula focused only on Western notions of “private property” could perpetuate the causes of conflict and displacement and pre-existing discrimination and injustices as marginalized groups tend to benefit from weaker, informal and unrecognized forms of tenure. It would also represent discrimination on the basis of tenure. These issues are often complex, but should be considered when applying the Pinheiro Principles.

## Opportunities for applying Principle 7

**Advocacy efforts in support of restitution measures** – Principle 7 can be a firm basis for supporting the inclusion of housing, land and property restitution measures and institutions within peace agreements and their implementation through voluntary repatriation arrangements and appropriate domestic legal frameworks. As forced displacement is often based on unlawful and arbitrary actions, agreement around Principle 7 can provide a normative framework for advocacy of appropriate and durable housing, land and property restitution programmes. For more information on housing, land and property and peace agreements, see the sections on Principles 1, 2, 10, 12, 13, 18 and 22.

**Determining the legitimacy of requisition/expropriation measures** – States responsible for displacement often conduct requisition/expropriation proceedings against the original housing, land and property of refugees and displaced persons as part of an effort to legitimize unlawful actions that precipitated the displacement concerned. While expropriation is not in and of itself a prohibited act, under human rights law it is subject to increasingly strict criteria against which all such measures must be judged to determine their lawfulness. In accordance with the general principles of reasonableness, fair balance and proportionality, the right to peaceful enjoyment of possessions should only be limited: (1) subject to law; (2) subject to the general principles of international law; and (3) to the interest of society. If any of these criteria are not met, persons displaced by such expropriation proceedings have a full right to the restitution of their original housing, land and property. Principle 7 elaborates further on the concept of “interest of society”. It adds to the existing norms above that in certain cases when the right to the peaceful enjoyment of possessions is subordinated the interest of society, this should be read restrictively. Depending on the circumstances, this could mean that only temporary or limited interference with the right to peaceful enjoyment of possessions would be a possible solution, including to enable future return and restitution.

<sup>113</sup> See E/CN.4/1998/53/Add.2, annex.

<sup>114</sup> International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, 1989 (No. 169), article 16.

<sup>115</sup> As emphasized by the FAO publication *Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security – Revised Version*.



## Frequently asked questions

### How do property and privacy rights relate?

Housing destruction during armed conflict is widespread. Frequently, the homes of refugees and displaced persons are intentionally destroyed as a means to prevent eventual return and restitution by those with rights over those homes and lands. The European Court of Human Rights judgment in the case of *Akdivar and others v. Turkey* addressed the crucial link between property and privacy rights in a manner clearly relevant to restitution cases everywhere. The Court held: “no doubt that the deliberate burning of the applicants’ homes and their contents constitutes at the same time a serious interference with the right to respect for their family lives and homes and with the peaceful enjoyment of their possessions. No justification for these interferences being proffered by the respondent Government – which confined their response to denying involvement of the security forces in the incident – the Court must conclude that there has been a violation of both Article 8 of the Convention [respect of the home] and Article of Protocol 1 [the right to the peaceful enjoyment of possessions]”.<sup>116</sup>

### Does the fair balance doctrine also apply to property rights cases?

Yes. For relevant guidance, it may be necessary, once again, to invoke the jurisprudence of major legal systems in other regions. In determining the existence of *fair balance*, the European human rights bodies have noted there had been a violation of article 1 of Protocol No. 1 of the European Court of Human Rights when no *fair balance* had been struck between the interest of protecting the right to property and the demands of the general interest as a result of the length of expropriation proceedings and the difficulties encountered by the applicants to obtain full payment of the compensation awarded and the deterioration of the plots eventually returned to them.<sup>117</sup> However, in the jurisprudence of the European Court, the examination of proportionality between individual and public interest may also deliver less than full compensation.

If State organs or other governing authorities were to revoke pre-existing housing, land and property rights in an arbitrary manner, or apply discriminatory criteria, the act would be disproportionate and, thus, a violation of international law and a breach of State obligations. The now widely accepted fair balance doctrine stipulates that, in determining the compatibility of a certain act regarding housing, land and property issues, any interference in the exercise of housing, land and property rights must strike a fair balance between the aim pursued and the nature of the pursuit.

## Useful guidance

### United Nations and international guidance:

- FAO, “Access to rural land and land administration after violent conflicts”, *FAO Land Tenure Studies* (Rome, 2005).
- Office of the High Representative, “A new strategic direction: proposed ways ahead for property law implementation in a time of decreasing international community resources”. Available at [www.ohr.int/?ohr\\_archive=a-new-strategic-direction-proposed-ways-ahead-for-property-law-implementation-in-a-time-of-decreasing-ic-resources](http://www.ohr.int/?ohr_archive=a-new-strategic-direction-proposed-ways-ahead-for-property-law-implementation-in-a-time-of-decreasing-ic-resources)
- European Court of Human Rights, Guide on article 1 of Protocol No. 1 to the European Convention on Human Rights protection of property. Available at <https://rm.coe.int/guide-art-1-protocol-1-eng/1680a20cdc>

### Other sources:

- James Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge, United Kingdom, Cambridge University Press, 2014).
- Scott Leckie and Chris Huggins, *Conflict and Housing, Land and Property Rights: A Handbook on Issues, Frameworks and Solutions* (Cambridge, United Kingdom, Cambridge University Press, 2011).

<sup>116</sup> European Court of Human Rights, *Akdivar and others v. Turkey*, App. No. 00021893/93, Judgment, 16 September 1996, reprinted in UN-Habitat, *Compilation of Selected Adjudication on Housing Rights*, 3rd edition (Nairobi, 2006).

<sup>117</sup> European Court of Human Rights, *Zubani v. Italy* (Article 41) (Application no. 14025/88), Judgment, 7 August 1996.

## PRINCIPLE 8: The right to adequate housing

8.1 Everyone has the right to adequate housing.

8.2 States should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.

### Key issues

The right to adequate housing was first recognized under article 25(1) of the Universal Declaration of Human Rights and subsequently included in more specific human rights standards. Article 11(1) of International Covenant on Economic, Social and Cultural Rights specifically enshrined this right as part of the right to an adequate standard of living. Article 38 of the Arab Charter of Human Rights also guarantees the right to housing as part of the right to an adequate standard of living. Everyone is entitled to housing that is “adequate”. As later defined in international law, housing adequacy involves several qualities: security of tenure; availability of services; materials; facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.<sup>118</sup>

While adequate housing is a human right that universally applies to all persons, specific articulation of that human right has been made at the international level with respect to refugees and IDPs and their access to, and secure tenure of, adequate housing. For example, the Executive Committee of the United Nations High Commissioner for Refugee in Conclusion No. 101 on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees, encourages countries of origin to provide homeless, returning refugees with access to land and/or adequate housing, comparable to local standards.<sup>119</sup> Similarly, Principle 18 of the Guiding Principles of Internal Displacement provide that [a]ll internally displaced persons have the right to an adequate standard of living” and that “At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced

persons with and ensure safe access to ... basic shelter and housing.”<sup>120</sup> The Refugee Convention and the Convention relating to the Status of Stateless Persons (1954) also guarantee a minimum set of rights, including the right to housing (article 21).

State obligations and government functions derived from the right to adequate housing include duties to take measures conferring security of tenure (and consequent protection against arbitrary or forced eviction and/or arbitrary confiscation or expropriation of housing) to prevent discrimination in the housing sphere and to ensure equal treatment and access to housing. States are also obliged to guarantee affordable housing, regulate landlord-tenant relations and secure access to housing resources suited to the needs of all, while prioritizing marginalized and/or vulnerable groups, such as women-headed households, persons with disabilities, the chronically ill, migrant workers, older persons, refugees and displaced persons.

Other human rights must be protected to enable the realization of the right to adequate housing, including the rights to access to information, participation, education, security of person and legal personality. The right to a remedy and freedom from cruel, inhuman and degrading treatment or punishment are also important. Housing demolitions, including as a punitive measure, may amount to “cruel, inhuman or degrading treatment or punishment”, which is prohibited by the Convention against Torture.<sup>121</sup> In the context of armed conflict, including occupation, such acts could constitute grave breaches of international humanitarian law and war crimes.

<sup>118</sup> Committee on Economic, Social and Cultural Rights Social, General comment No. 4 (1991), para 8.

<sup>119</sup> Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees, No. 101 (LV) – 2004, Executive Committee 55th session, 8 October 2004 (A/AC.96/1003).

<sup>120</sup> See E/CN.4/1998/53/Add.2.

<sup>121</sup> The United Nations Committee on Torture has concluded that “Israeli policies on house demolitions, which may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment,” as defined in article 16 of the Torture Convention. Conclusions and Recommendations of the Committee against Torture: Israel, CAT/C/XVII/Concl.5, 23 November 2001, para. 6(j). See also Committee against Torture, Concluding observations on the fifth periodic report of Israel, CAT/C/ISR/CO/5, 3 June 2016, para. 41: “The State party should take all the measures necessary to put an end to the policy of punitive housing demolitions, as it violates article 16 of the Convention”.

## Opportunities for applying Principle 8

**Monitoring of, and problem identification in, current housing conditions** – While Principle 8 is relevant at all stages of the displacement cycle, Handbook users should pay close attention to the application of this principle *during* displacement. A considerable majority of the world’s refugees and displaced persons, all of whom are potential housing, land and property restitution claimants, reside during their displacement in conditions that fall far short of basic international minimum standards for adequate housing, access to water and services, basic criteria on habitability, security of housing, land and property tenure rights and others. Their conditions indicate whether a State is meeting its core minimum obligations to respect, protect and fulfil the right to adequate housing. Countries in the Middle East and North Africa region, particularly Türkiye, Jordan and Lebanon, continue to host a large number of Syrian refugees, of which many live in substandard conditions. For instance, Lebanon maintains a “no-camp policy” for refugees from the Syrian Arab Republic, which results in most refugees renting space from private Lebanese landlords, often below minimum standards of adequate housing. The 2022 Vulnerability Assessment of Syrian Refugee in Lebanon reported that more than half (58 per cent) of Syrian refugee households were living in

shelters that were either overcrowded, have conditions below humanitarian standards, and/or were in danger of collapse. A total of 7 per cent of households were living under an eviction notice.<sup>122</sup> Another example involves the Syrian Arab Republic, where, in 2016, available data indicated that approximately 1.2 million individuals from the displaced and non-displaced population had taken accommodation in damaged, unfinished or abandoned properties. Of the approximately 10 per cent of IDPs living in collective centres, the majority of them were assessed as being inadequate from a shelter and water, sanitation and hygiene perspective.<sup>123</sup>

**Developing and implementing comprehensive reconstruction programmes linked to return and restitution** – Successful restitution programmes generally combine legal, judicial, administrative and other measures to enable refugees and displaced persons to return to their original homes through reconstruction and housing improvement programmes in which they can participate. Only in this way can the entire bundle of housing, land and property rights of returning refugees and displaced persons be realized within the reparation’s framework. To the maximum possible extent, reconstruction activities should be formally linked with restitution programmes. This issue is further discussed under Principle 21.

<sup>122</sup> Inter-Agency Coordination Lebanon and others, “Vulnerability assessment of Syrian refugees in Lebanon”, May 2023, p. 16. Available at <https://docs.wfp.org/api/documents/WFP-0000149219/download/>

<sup>123</sup> Laura Cunial, “Housing, land and property in the Syrian Arab Republic”.

## Frequently asked questions

### How do housing rights differ from land rights and property rights, and how are they synonymous with one another?

While housing, land and property rights are each unique legal and human rights concepts, they are closely related to one another and to a certain degree overlap with one another. In general terms, housing rights are the rights of “everyone” to have access to a safe, secure, affordable and habitable home. Land rights refer to rural and urban areas and cover rights related directly to the land itself, as distinct from purely the structure built on the land in question. Property rights concern the exclusive user and ownership rights over a particular dwelling or land parcel. Each of these terms are important, but none of them capture in their entirety the full spectrum of “rights to the home”, which is envisaged under restitution law. For the purposes of the restitution process, therefore, and because historical, political, cultural and other distinctions between countries with respect to what have also more broadly been called “residential” rights are so extensive, increasingly the term “housing, land and property rights” is used to describe the numerous *residential* dimensions of these questions from the perspective of human rights law. People in one country may label “land rights” the same as what citizens of another country view as “housing

rights”. “Property rights” in one area may greatly assist in protecting the rights of tenants, while in another place property rights are used to justify mass forced evictions. Many more examples could be given, but the important point here is simply that the composite term “housing, land and property rights” probably captures the notion of “original home” or “place of habitual residence” more fitting than other possible terms.

### Do housing rights require the State to build housing for everyone?

Human rights law requires States to create conditions within society – through law, policy, budgetary allocations and so forth – to ensure that everyone can access housing that is affordable, habitable and fully “adequate in accordance with international standards.” This can – and should – include direct financing for the construction of new housing stock and budgetary allocations towards this end, to the maximum of a country’s resources, in accordance with international housing rights provisions such as those enshrined in article 11(1) of the International Covenant on Economic, Social and Cultural Rights. In cases in which people are unable to house themselves adequately, for instance in the aftermath of a disaster, governments that do not have the means to provide housing must seek international assistance to comply with their obligations under international human rights law.

## Useful guidance

### United Nations and international guidance:

- Committee on Economic, Social and Cultural Rights Social, general comment No. 4: The right to adequate housing (art. 11 (1) of the Covenant).
- Report of the Special Rapporteur on the human rights of internally displaced persons, 17 July 2018 (A/73/173).
- Report of the Special Rapporteur on the human rights of internally displaced persons, 21 April 2021 (A/HRC/47/37).
- Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (women and the right to adequate housing), 26 December 2011 (A/HRC/19/53).
- COHRE, *Sources No. 4 – Legal Resources for Housing Rights – International and National Standards* (Geneva, 2000).
- OHCHR and UN-Habitat, “The right to adequate housing”, Fact Sheet No. 21 (Rev. 1) (2009). Available at <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-21-rev-1-human-right-adequate-housing>

- OHCHR, “Frequently asked questions on economic, social and cultural rights”, Fact Sheet No. 31 (2008). Available at [www.ohchr.org/documents/publications/factsheet33en.pdf](http://www.ohchr.org/documents/publications/factsheet33en.pdf).
- FAO. *Voluntary Guidelines on Responsible Governance of tenure of Lands, Fisheries and Forests in the Context of National Food Security*, first revision (Rome, 2012).
- Siraj Said, *A Training Course on Land, Property and Housing Rights in the Muslim World* (Nairobi, UN-Habitat, 2010).
- Anna Corsi and Harris Selod, *Land Matters: Can Better Governance and Management of Scarcity Prevent a Looming Crisis in the Middle East and North Africa?* (Washington, D. C., World Bank Group, January 2023).

#### Other sources:

- NRC and International Federation of Red Cross and Red Crescent Societies, “The Importance of addressing Housing, Land and Property (housing, land and property): challenges in Humanitarian Response” (2016). Available at <https://www.nrc.no/globalassets/pdf/reports/the-importance-of-housing-land-and-property-hlp-rights-in-humanitarian-response.pdf>.

## PRINCIPLE 9: The right to freedom of movement

- 9.1 Everyone has the right to freedom of movement and the right to choose his or her residence. No one shall be arbitrarily or unlawfully forced to remain within a certain territory, area or region. Similarly, no one shall be arbitrarily or unlawfully forced to leave a certain territory, area or region.
- 9.2 States shall ensure that freedom of movement and the right to choose one's residence are not subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with international human rights, refugee and humanitarian law and related standards.

### Key issues

The right to freedom of movement and residence is recognized in numerous human rights instruments, including, among them, the Universal Declaration for Human Rights (article 13(1)), the International Covenant on Civil and Political Rights (article 12 (1)) and the African Charter for Human and People's Rights (article 12(1)). Both versions of the Arab Charter of Human Rights (1994 and 2004) guarantee the human right to freedom of movement. The 2004 version states, in article 26, that: (a) Everyone lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force; and (b) No State party may expel an alien lawfully in its territory, other than in pursuance of a decision reached in accordance with law and after that person has been allowed to seek a review by the competent authority, unless compelling reasons of national security preclude it. Collective expulsion of aliens is prohibited under all circumstances.

The Human Rights Committee, in its general comment No. 27 (1999) notes that everyone lawfully within the territory of a State enjoys, within that territory, the right to move freely and to choose his or her place of residence". The right to move freely relates to the whole territory of a State, including all parts of federal States. According to the International Covenant on Civil and Political Rights, article 12, persons are entitled to move from one place to another and to establish themselves in a place of their choice. The enjoyment of this right must not be made dependent on any purpose or reason for the person wanting to move or to stay in a place. Subject to the provisions of article 12, paragraph 3, the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory.

As outlined in the Guiding Principles for Internal Displacement (Principle 14), the right to freedom of movement underpins the right of IDPs to seek safety in another part of the country, move in and out of camps where they are established and choose their residences. The Guiding Principles also affirm displaced persons' option of returning to their places of origin or of habitual residence, or to resettle voluntarily in another part of the country (Principle 28). Accordingly, beyond issues linked to security, IDPs should not be forced to return or resettle elsewhere if they do not wish to do so, nor should they be prohibited from seeking safety within their countries or, if necessary, outside their countries (Principle 15).

### Opportunities for applying Principle 9

**Prior to and during return, repatriation and durable solutions programmes** – Freedom of movement is a critical measure to prevent forced relocation or forced return and to allow refugees and displaced persons to seek safety. Freedom of movement and the concomitant right to choose one's residence are useful reference points upon from which to elaborate durable solution programmes supporting voluntary return to country of origin, local integration in the place of displacement or settlement elsewhere.

**During the implementation of restitution and compensation rights** – Principle 9 is directly relevant to the implementation of housing, land and property restitution rights. These rights presume the ability of refugees and displaced persons to "move freely" back to their places of origin and to "choose their place of residence," in their place of origin, displacement or elsewhere. As indicated in Principle 2.2, the choice of residence should not affect the rights to restitution and compensation: "The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution." Restrictions linking restitution rights to the choice of residence is incompatible with the Principles.

## Frequently asked questions

### Are the right to freedom of movement, the right to return and the right to housing, land and property restitution mutually dependent rights?

The Human Rights Committee, in its general comment No. 27 (1999) is very clear on this linkage, stating that “[t]he right to return is of the utmost importance for refugees seeking voluntary repatriation. It also implies prohibition of enforced population transfers or mass expulsions to other countries”. Accordingly, these three rights effectively triangulate with one another with respect of each right strengthening the likelihood of respect for the others. Although the right to restitution is not dependent on return, the right to restitution and the right to return are mutually reinforcing as restitution is a key component of a sustainable return, and return facilitates physical restitution.

### Could a return policy limit freedom of movement, and what are possible responses?

Political developments, and the urgency they may impose on the return process, can limit the “voluntary” dimension of return and the right to freedom of movement. For instance, an election or population census, or the desire by host countries to see refugees leave, have often pressured refugees and displaced persons to return to their country or area of origin at the expense of support to other options. Such pressure, often resulting in the issuing of actual return policies by authorities, may hinder freedom of movement and free choice of residence. Such pressure can also be indirect, such as through the provision of assistance conditional on the choice of a specific durable solution, or through the provision of incomplete or inaccurate information on conditions in the area of return or resettlement. Moreover, it tends to delay the achievement of durable solutions to displacement. People pressured to return may arrive in an environment where there has not been enough time or sufficient resources to plan and implement reconstruction and reintegration activities properly. In parallel, those who would rather integrate into their place of displacement or settle elsewhere risk remaining without adequate support. This may lead to tensions with populations in areas of return or displacement. In any case, restitution and compensation rights should not be tied to the choice of residence to avoid putting pressure on people’s choice of residence.

### Is freedom of movement only relevant in countries of origin as far as restitution rights are concerned?

No. Freedom of movement applies when refugees are resident in a host country and when refugees seek to exercise restitution rights in their own country upon return. The right to freedom of movement is a human right, not exclusively for or reduced (derogated) for refugees and displaced persons. Freedom of movement is a human right enshrined in the International Covenant on Civil and Political Rights and the Refugee Convention.

### What are the limits on the right to freedom of movement?

Freedom of movement may only be subject to restrictions in exceptional circumstances, such as “in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed”, as outlined by article 4.1 of the International Covenant on Civil and Political Rights. However, restrictions should not be discriminatory, arbitrary or outside the rule of law. The Human Rights Committee states that for restrictions to be permissible, they must be provided by law and necessary in a democratic society to protect national security, public order, public health or morals and the rights and freedoms of others. The restrictions must also be consistent with the other human rights recognized in the Covenant.<sup>124</sup>

In some countries, refugees and displaced persons have been subjected to curfews and bans from public spaces by municipalities and local authorities, outside the provisions of human rights and local law.<sup>125</sup> For instance, it was reported that some municipalities in Lebanon adopted COVID-19-related rules and restrictions for Syrian refugees that were stricter than those for the general population.<sup>126</sup> While adopting restrictions to the right to freedom of movement can be legitimate to protect public health in the context of a world pandemic, these measures must be proportionate to the goal and non-discriminatory.

Restrictions to freedom of movement can hinder the protection of housing, land and property restitution rights by preventing people to travel to initiate procedures and obtain the civil and property documentation required to claim their housing, land and property rights. For instance, in the Syrian Arab Republic, the existence of multiple checkpoints between different areas of control, where identity documents are required, hinders freedom

<sup>124</sup> Ibid., paras. 11–12.

<sup>125</sup> ALEF and PAX, *Trapped in Lebanon: The Alarming Human Rights and Human Security Situation of Syrian refugees in Lebanon* (Beirut: ALEF and PAX, May 2016), pp. 24–26; Human Rights Watch, “Lebanon: at least 45 local curfews imposed on Syrian refugees”, October 2014. Available at [www.hrw.org/news/2014/10/03/lebanon-least-45-local-curfews-imposed-syrian-refugees](http://www.hrw.org/news/2014/10/03/lebanon-least-45-local-curfews-imposed-syrian-refugees) and Palig Taslakian, “Curfews and human rights within the Syrian context in Lebanon”, *Peacebuilding in Lebanon*, No. 12 (June 2016).

<sup>126</sup> Human Rights Watch, “Lebanon: refugees at risk in Covid-19 response. discrimination risks harming Syrians, Lebanese alike”, 2 April 2020. Available at [www.hrw.org/news/2020/04/02/lebanon-refugees-risk-covid-19-response](http://www.hrw.org/news/2020/04/02/lebanon-refugees-risk-covid-19-response)

of movement.<sup>127</sup> The loss of personal documentation limits freedom of movement, which, in turn, prevents the renewal of lost documentation. Checkpoints are also used to deny return, particularly for people originating from areas formerly or currently under the control of the opposition. In addition, the risk of arbitrary detention, enforced disappearance, torture and ill-treatment and corruption at checkpoints deter people from going through them.<sup>128</sup> Women living in areas controlled by Islamist

groups face even stricter limitations to their freedom of movement as they are not allowed to move without a male relative.<sup>129</sup> These restrictions lead displaced people to avoid return or movements within the country, which in turn limits their capacity to obtain the necessary civil and property documentation to prove that their housing, land and property rights, protect their property or dispose of them.<sup>130</sup>

### Box 11: When technology supports freedom of movement and access to rights

In Ukraine a smart phone application called “your app” provides information and legal advice to IDPs and survivors of gender-based violence. This legal information application aims to help them claim their rights and obtain redress. The application also gives information on which documents and procedures are legally required to travel across the contact line between government-controlled areas and non-government-controlled areas. As such, it helps to dispel rumours and reinforces people’s knowledge of their rights, confidence, and freedom of movement. The application was initially created by the United Nations Development Programme (UNDP) as part of the United Nations Recovery and Peacebuilding programme and later handed over to the Coordination Centre for Legal Aid Provision of the Ministry of Justice, reinforcing the sustainability of the project.<sup>131</sup>

## Useful guidance

### United Nations and international guidance:

- Inter-Agency Standing Committee, *IASC Framework on durable solutions for internally displaced persons* (Washington, D.C., Brookings – University of Bern Project on Internal Displacement, 2010).
- Human Rights Committee, general comment 27: Freedom of movement (article 12), 1 November 1999 (CCPR/C/21/Rev.1/Add. 9).

### Other sources:

- Walter Kälin, “Supervising the 1951 Convention Relating to the Status of Refugees: Article 35 and Beyond,” in *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection*, In Erika Feller, Volker Türk and Frances Nicholson, eds. (Cambridge, United Kingdom, Cambridge University Press, 2008).
- Harild, Niels, Ager Christensen and Roger Zetter. “Sustainable refugee return: triggers, constraints, and lessons on addressing the development challenges of forced displacement”, GPDF Issue Note Series, August 2015. Available at <http://documents.worldbank.org/curated/en/542611468188337350/pdf/99618-WP-PUBLIC-Box393206B-Sustainable-Refugee-Return-15Sept-WEB-PUBLIC.pdf>

<sup>127</sup> United Nations Syria, “Humanitarian needs overview: Syrian Arab Republic”, 2019, p. 51. Available at [www.unocha.org/publications/report/syrian-arab-republic/2019-humanitarian-needs-overview-syrian-arab-republic-enar](http://www.unocha.org/publications/report/syrian-arab-republic/2019-humanitarian-needs-overview-syrian-arab-republic-enar) and see A/HRC/32/35, add 2, paras. 56 and 60.

<sup>128</sup> See A/HRC/45/31, paras. 13 and 30.

<sup>129</sup> See A/HRC/46/54, para. 49.

<sup>130</sup> See A/HRC/45/31, para. 21.

<sup>131</sup> GP20, “Working together better to prevent, address and find durable solutions to internal displacement” G20 Compilation of national practices” (2021). Available at <https://migrationnetwork.un.org/resources/working-together-better-prevent-address-and-find-durable-solutions-internal-displacement>





## SECTION IV

# VOLUNTARY RETURN IN SAFETY AND DIGNITY

### PRINCIPLE 10: The right to voluntary return in safety and dignity

- 10.1 All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date and accurate information, including on physical, material and legal safety issues in countries or places of origin.
- 10.2 States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands and places of habitual residence to do so. This right cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations.
- 10.3 Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able effectively to pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property.
- 10.4 States should, when necessary, request from other State or international organisations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons.

## Key issues

Section IV of the Principles reaffirms the right to voluntary return in safety and dignity, underscoring the importance and intimate relationship between this right and the right to housing, land and property restitution. The rights of refugees and displaced persons to return to one's country, region, city or village of origin is well established in international law. The Universal Declaration on Human Rights recognizes that "everybody has the right...to return to his country."<sup>132</sup> The International Covenant on Civil and Political Rights guarantees that "no one shall be arbitrarily deprived of the right to enter his own country".<sup>133</sup>

The regional treaties applicable to the Middle East and North Africa region, namely the African Charter of Human and People's Rights,<sup>134</sup> the Arab Charter on Human Rights<sup>135</sup> and the Convention Governing the Specific Aspects of Refugee Problems in Africa,<sup>136</sup> affirm the right to return. Other regional treaties set out the right as well.<sup>137</sup>

The right to voluntary return in safety and dignity is part of customary international humanitarian law. As the International Committee of the Red Cross notes, "[d]isplaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist."<sup>138</sup> The right is recognized in numerous peace agreements and displacement-related agreements concerning Abkhazia (Georgia), Afghanistan, Bosnia and Herzegovina, Croatia, Liberia, Sudan and Tajikistan.<sup>139</sup> The Security Council has

reaffirmed the right to return to one's home in resolutions addressing conflict-related displacement in numerous situations, including in the countries in the Middle East and North Africa region, such as Cyprus,<sup>140</sup> Iraq,<sup>141</sup> Kuwait,<sup>142</sup> the Syrian Arab Republic,<sup>143</sup> and Yemen<sup>144</sup>. Other United Nations bodies have also reaffirmed the right to return to one's home. For instance, the General Assembly repeatedly has reaffirmed or recognized the right to return to one's home in resolutions concerning Algeria,<sup>145</sup> Cyprus<sup>146</sup> and the Occupied Palestinian Territory,<sup>147</sup> among other territories.<sup>148</sup>

As already explained, voluntary return or repatriation has expanded into a concept involving not simply the return to one's country or region, but to one's original housing, land and property. As noted by UNHCR in 2001, "[e]xperience has shown that voluntary repatriation operations are unlikely to be fully successful or sustainable in the longer-term if housing and property issues – being an integral part of return in safety and dignity – are left unattended... The right of a refugee to return to his/her country is now increasingly coupled with his/her right to adequate housing. In this context, the right to adequate housing has developed to extend to the right to not be arbitrarily deprived of housing, land and property in the first place. As corollary to this, refugees have the right to return not only to their countries of origin but also to recover the homes from which they were previously evicted."<sup>149</sup> The subsequent UNHCR Agenda for Protection<sup>150</sup> expressly highlights the importance of effective measures for housing, land and property restitution within the context of voluntary

<sup>132</sup> See General Assembly resolution 217A (III), article 13(2).

<sup>133</sup> See General Assembly resolution 2200A (XXI), article 4.

<sup>134</sup> Organisation of African States, [Banjul] Charter on Human and Peoples' Rights (ACHPR), adopted 27 June 1981, document CAB/LEG/67/3 rev. 5. article 12, para. 2 provides: "Every individual shall have the right to leave any country including his own, and to return to his country".

<sup>135</sup> Council of the League of Arab States, Arab Charter on Human Rights (2004), article 27.

<sup>136</sup> African Commission on Human Rights, Convention Governing Specific Aspects of Refugee Problems in Africa, article V(1), Convention Governing Specific Aspects of Refugee Problems in Africa, article V(1).

<sup>137</sup> See Protocol 4 to the European Convention on Human Rights, article 3; and the American Convention on Human Rights, article 22(5).

<sup>138</sup> International Committee of the Red Cross, Customary International Humanitarian Law: Rules, chap. 38 "Displacement and Displaced Persons". Available at <https://ihl-databases.icrc.org/en/customary-ihl/v1>

<sup>139</sup> See Quadripartite Agreement on Georgian Refugees and Internally Displaced Persons, section 5; Afghan Peace Accords, Section 6; Agreement on Refugees and Displaced Persons annexed to the Dayton Accords, Article 1; Agreement on the Normalization of Relations between Croatia and the Federal Republic of Yugoslavia, article 7; Panmunjom Armistice Agreement, Article III (59)(a) and (b); Cotonou Agreement on Liberia, article 18(1); Sudan Peace Agreement, chap. 4, para. 3(a), and chap. 5, section 2; Protocol on Tajik Refugees, section 1.

<sup>140</sup> See Security Council resolution 361.

<sup>141</sup> See Security Council resolution 1770.

<sup>142</sup> See Security Council resolution 687.

<sup>143</sup> See Security Council resolution 2254.

<sup>144</sup> See Security Council resolution 2140.

<sup>145</sup> See General Assembly resolution 1672 (XVI).

<sup>146</sup> See General Assembly resolution 3212 (XXIX).

<sup>147</sup> See General Assembly resolutions 51/126 and 194 (III).

<sup>148</sup> See Security Council resolutions 361, 726, 779, 820, 859, 874, 896, 906, 947, 993, 999, 1036, 1078, 1096, 1124, 1187, 1199, 1203, 1225, 1239, 1244 and 1272; and General Assembly resolutions 48/116, 49/10, 50/193, 53/164 and 54/183.

<sup>149</sup> United Nations High Commissioner for Refugees, Inter-Office Memorandum No. 104/2001 and Field Office Memorandum No. 101/200.

<sup>150</sup> The Agenda was the consensus outcome of Global Consultations of UNHCR and States from 2000 to 2002, which was endorsed by the General Assembly. See A/AC.96/965/Add.1, and UNHCR, *Agenda for Protection*, 3rd edition (Geneva, 2003).

repatriation, the need for effective information to refugees regarding restitution procedures, and the crucial nature of equal rights for returnee women to housing, land and property restitution.

It should be noted that the forced return of refugees and other displaced persons is incompatible with international human rights standards, as this violates the principle of *non refoulement*. Article 33 (1) of the Refugee Convention provides that “[n]o Contracting State shall expel or turn back (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where [her/]his life or freedom would be threatened ...”<sup>151</sup> Similarly, the Guiding Principles of Internal Displacement provide that “Internally displaced persons have...[t]he right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk”.<sup>152</sup>

## Opportunities for applying Principle 10

**During the preparation of voluntary repatriation/return plans** – Practitioners preparing voluntary repatriation/return plans should explicitly address restitution considerations within such plans and outline specific restitution rights and responsibilities. Refugees and displaced persons should participate in shaping the eventual housing, land and property restitution arrangements. Governments and international organizations involved in voluntary return and repatriation, in particular UNHCR,

should ensure the distribution of information packets to all returnees, outlining which existing restitution and compensation rights and procedures are in place to facilitate access to their original homes and lands, and how these rights can be enforced in the event of a housing, land and property dispute with a secondary occupant.

**Contingency planning for eventual return** – Agencies and government bodies should apply Principle 10 when doing contingency planning for the eventual return of refugees and displaced persons. This would apply, in particular, to cases of medium- to long-term displacement, including in cases in which voluntary return has been either resisted by the country of origin, or where security and other conditions continue to make immediate restitution unlikely. In principle, agencies supporting the restitution rights of refugees and displaced persons can support these rights by developing contingency plans well before return appears likely. Such plans should address the voluntary and informed choices of the refugee or displaced population, combined with legal analyses of the situation in the country of origin with respect to housing, land and property restitution and compensation rights, and surveys of the current physical and legal status of refugee and displaced person’s original housing, land and property. This would clarify a range of questions concerning restitution and can be of use during negotiations with officials in the State of origin who are opposed to return of displaced persons, which may develop greater understanding among those hesitant to accept the return of those currently displaced.

### Box 12: Proposed clauses on housing, land and property restitution in the United Nations High Commissioner for Refugees Sample Voluntary Repatriation Agreement<sup>153</sup>

#### Article 8(1):

The Government of (country of origin) shall, to the maximum of its available resources, ensure that Returnees have access to land for settlement and use, in accordance with the relevant national laws.

#### Article 8(2):

The Government of (country of origin) shall facilitate, in accordance with international law and principles, and applicable national law, the restitution and/or compensation for housing, land and/or property in (country of origin) of which Refugees and Returnees were deprived in an arbitrary or illegal manner immediately prior to, or during, displacement. In accordance with international law and principles, this right of restitution is not conditional on return of the Refugee to (country of origin).

<sup>151</sup> See General Assembly resolution 429 (V) article 1.A(2).

<sup>152</sup> Commission of Human Rights, Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2, annex), Principle 15(d).

<sup>153</sup> UNHCR, Sample Voluntary Repatriation Agreement. Available at [www.unhcr.org/sites/default/files/legacy-pdf/50aa07929.pdf](http://www.unhcr.org/sites/default/files/legacy-pdf/50aa07929.pdf)

## Frequently asked questions

### Does restitution necessarily mean physical return and repossession of one's original home and land or are other intermediate outcomes also considered adequate solutions?

This is one of the most complex questions concerning restitution. Restoring possession of one's original housing, land and property is the preferred solution. Great care is necessary when alternatives to physical repossession are systematically considered or implemented by any party. First, practitioners must recognize that the right to return for refugees or displaced persons is not an *obligation* to return. Return cannot be restricted, prescribed and, conversely, cannot be imposed as a condition for restoring housing, land and property rights. Those rights remain valid, whether return ever takes place.

In some settings, return may be impossible or illegal due to the security situation or potential threats, but a person with a restitution right may wish to exercise rights over that property without physically returning there. Particularly crucial in these contexts, of course, are the expressed wishes of those holding restitution rights; beneficiaries of these rights can neither be forced to return nor forced into accepting a form of reparation which they do not prefer unless this is fully consistent with the Principles.

In the restitution experience of South Africa, *equitable redress* has been an important form of restitution that has enabled many rights holders to access restitution rights without necessarily re-inhabiting their former homes and lands. It is important to note that in some cases, only a small fraction of refugees and displaced persons with successful restitution claims wished to seek physical repossession of their properties. In Kosovo, for instance, it concerned only 12 per cent of successful claimants. This low percentage of claimants wishing to repossess their housing, land and property was largely due to security concerns. More than 40 per cent of those making restitution claims in Kosovo have settled their cases with secondary occupants through mediation, which has involved either selling, leasing or

renting the properties in question. When return is simply not possible, refugees and displaced persons can benefit from restitution programmes that enable them to reassert control over their housing, land and property by selling, leasing or renting out these assets, for instance. It must be emphasized that such wishes must emanate from refugees and displaced persons themselves and not imposed upon them.

### Who pays for voluntary repatriation and restitution programmes?

Consistent with the concepts of liability and reparation, the perpetrators of forced displacement of refugees and displaced persons should be accountable to restore the lost values and damage they have caused. When those processes may be prolonged and/or elusive, the State is the principal and immediate duty bearer and guarantor of reparation for right-bearing victims. States should, as needed, request financial and technical assistance from the international community to facilitate restitution. A combination of national budgets, international cooperation and assistance, contributions by international finance institutions, charitable and philanthropic donors and private-sector actors is likely.

In cases in which States are unable to manage housing, land and property restitution programmes themselves, the Principles suggest channels for sharing and enlisting critical expertise and capacity to fulfil the obligations of the State. Because restitution procedures often need to be implemented in highly charged political situations, the Principles recognize that governments, to perform their State-like duties, should request the technical assistance and cooperation of other States and relevant international agencies to establish provisional regimes to provide refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective housing, land and property restitution. This is especially relevant when a general breakdown in the rule of law occurs, or when States are unable to implement the procedures, institutions, and mechanisms necessary to facilitate the restitution process in a just and timely manner.

**Box 13: Financing restitution efforts in Lebanon**<sup>154</sup>

The Middle East and North Africa region has already developed innovative approaches, including, among them, examples of combining international cooperation and domestic private-sector contributions to finance restitution processes. One such private sector example is the “Loan of the Displaced”, provided to the Lebanese Ministry of the Displaced of Lebanon by the Bank of Beirut and Arab Countries, which announced its contribution to the housing, land and property restitution effort as a stroke of “social corporate responsibility aiming at contributing to the sustainable economic and social development of Lebanon”. The Bank of Beirut and Arab Countries extended to the country’s Ministry of the Displaced a loan of up to 60 per cent of the speculative value of the restored property at an exceptional interest rate of 1.62 per cent, with a repayment period reaching up to 25 years. This arrangement was designed to allow the civil war’s internally displaced households to reconstruct, renovate, repair or improve their houses in any of the Lebanese villages that were devastated by the displacement that occurred before 1990.

**Are there circumstances under which the right to return can be limited?**

In some situations, exposure to natural or human-made hazards and disasters may render return impossible for the safety of those displaced. Reducing the exposure of populations in disaster-prone areas by adopting disaster risk reduction measures, such as retrofitting housing or building protective infrastructures, such as embankment, should always be prioritized to ensure that displaced persons can return and preserve their cultural, social and economic networks. Planned relocation should

be considered as a solution of last resort where the risk cannot be sufficiently reduced or when return is impossible – for instance, when land has disappeared. Actors involved in planned relocation should exercise due diligence to ensure that disaster risk reduction measures, such as the declaration of no-build zones, which de facto deny return to former inhabitants, are based on objective data and not used in a discriminatory manner to prohibit reconstruction or return.<sup>155</sup> Any relocation should be done with the meaningful consultation and participation of concerned communities.<sup>156</sup>

**Useful guidance****United Nations and international guidance:**

- IOM, “Supporting HLP-Sensitive CCCM Interventions in Informal Sites in NW Syria”, prepared by IOM on behalf of CCCM Cluster, Turkey hub, December 2019. Available at <https://reliefweb.int/report/syrian-arab-republic/supporting-hlp-sensitive-cccm-interventions-informal-sites-nw-syria-hlp>
- Report of the Special Rapporteur on the human rights of internally displaced persons, Housing, land and property issues in the context of internal displacement, 21 April 2021 (A/HRC/47/37).
- UNHCR and UN-Habitat, “Housing, land & property issues in Lebanon: implications of the Syrian refugee crisis”, August 2014. Available at <https://reliefweb.int/report/lebanon/housing-land-property-issues-lebanon-implications-syrian-refugee-crisis-august-2014>
- UNHCR, Excom Conclusion No. 18 on Voluntary Repatriation (1980); UNHCR, Excom Conclusion No. 40 on Voluntary Repatriation (1985); UNHCR, Excom Conclusion No. 101 (LV) on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees (2004); and UNHCR, Excom Conclusion No. 109 (LXI) on Protracted Refugee Situations (2009).

<sup>154</sup> Bank of Beirut and Arab Countries, “The Ministry of Displaced and BBAC sign the ‘Loan of the Displaced’ Protocol”, 6 November 2010. Available at [www.bbacbank.com/newsroom/press-releases/ministry-displaced-and-bbac-sign-%E2%80%9Cloan-displaced%E2%80%9D-protocol](http://www.bbacbank.com/newsroom/press-releases/ministry-displaced-and-bbac-sign-%E2%80%9Cloan-displaced%E2%80%9D-protocol)

<sup>155</sup> See A/HRC/47/37, para. 59.

<sup>156</sup> Scott Leckie and Chris Huggins, *Repairing Domestic Climate Displacement: The Peninsula Principles* (Routledge, 2015).

- UNHCR, *Handbook: Voluntary Repatriation/International Protection* (Geneva, Department of International Protection, 1996).
- UNHCR, “Update on voluntary repatriation”, Executive Committee of the High Commissioner’s Programme Standing Committee, 66th meeting, 7 June 2016 (EC/67/SC/CRP.13).

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- Norwegian Relief Organization and International Federation of Red Cross and Red Crescent Societies, “Security of tenure in humanitarian shelter operations”, 2015. Available at [www.sheltercluster.org/sites/default/files/docs/nrc\\_ifrc\\_security\\_of\\_tenure.pdf](http://www.sheltercluster.org/sites/default/files/docs/nrc_ifrc_security_of_tenure.pdf)
- Scott Leckie “Housing and property issues for refugees and internally displaced persons in the context of return, key considerations for UNHCR policy and practice”, *Refugee Survey Quarterly*, vol. 19, No. 3 (2000), pp. 5–63.
- Ismael Sheikh Hassan, “Activism in the context of reconstructing Nahr al-Bared refugee camp: Lessons for Syria’s reconstruction”, Arab Reform Initiative, September 2021. Available at [www.arab-reform.net/publication/activism-in-the-context-of-reconstructing-nahr-al-bared-refugee-camp-lessons-for-syrias-reconstruction](http://www.arab-reform.net/publication/activism-in-the-context-of-reconstructing-nahr-al-bared-refugee-camp-lessons-for-syrias-reconstruction)
- Global Shelter Cluster webpage with guidance and country examples of owner-driven approaches. Available at [www.sheltercluster.org/sustainable-solutions-working-group/library/owner-driven-approaches](http://www.sheltercluster.org/sustainable-solutions-working-group/library/owner-driven-approaches)
- Harild, Niels, Ager Christensen and Roger Zetter, “Sustainable refugee return: triggers, constraints, and lessons on addressing the development challenges of forced displacement”, GPF Issue Note Series (Washington, D. C., World Bank Group, 2015).
- Huma Gupta, *Home Sweet Home : Housing Practices and Tools That Support Durable Solutions For Urban IDPS* (Geneva, NRC, March 2015).
- Barbara McCallin and Marie Kostrz, “Lessons learned from international experiences relevant to Syria’s housing, land and property issues”, March 2022. Available at <https://tda-sy.org/2022/03/24/53333/>
- Noor Hamadeh and Krystel Bassil, “Demolishing human rights in the name of reconstruction: lessons learned from Beirut’s Solidere for Syria”, The Tahrir Institute for Middle East Policy, 16 September 2020. Available at <https://timep.org/commentary/analysis/demolishing-human-rights-in-the-name-of-reconstruction-lessons-learned-from-beirut-solidere-for-syria/>
- Hannis Baumann (ed.), “RECLAIMING HOME: The struggle for socially just housing, land, and property rights in Syria, Iraq and Libya” (Frederick-Ebert Stiftung, 2019). Available at <https://library.fes.de/pdf-files/bueros/tunesien/15664.pdf>



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## **SECTION V**

# **LEGAL, POLICY, PROCEDURAL AND INSTITUTIONAL IMPLEMENTATION MECHANISMS**

### **PRINCIPLE 11: Compatibility with international human rights, refugee and humanitarian law and related standards**

- 11.1 States should ensure that all housing, land and property restitution procedures, institutions, mechanisms and legal frameworks are fully compatible with international human rights, refugee and humanitarian law and related standards, and that the right to voluntary return in safety and dignity is recognised therein.

## Key issues

Principle 11 sets out the baseline for determining the adequacy of the national restitution procedures, institutions, mechanisms and legal frameworks that exist by urging States to ensure that they are compatible with international human rights, refugee and international humanitarian laws and the standards related to them. To do this, intensive national legislative reviews combined with the development of expertise in the country of origin on the meaning and status of housing, land and property rights within these various legal regimes are required. Through the reference to “other standards,” Principle 11 reaffirms the need to streamline national restitution rules and regulations with their counterparts in international human rights, refugee and international humanitarian law, reflected in these Principles.

Principle 11, therefore, provides the basis for planning the next steps, namely the division of labour, resource mobilization and budgeting. To facilitate this, it is necessary

to identify the housing, land and property rights issues and violations to address upon restitution, determine the resources needed to complete the process and evaluate the adequacy of national restitution procedures, institutions, mechanisms and legal frameworks.

## Opportunities for applying Principle 11

**When the country of origin is committed to the achievement of solutions** – This opportunity reinforces the need to restore and retain the State as the principal actor and duty bearer in the implementation of the Principles. Principle 11 can be used as a blueprint for national-level analysis of the consistency of existing laws, procedures and judicial competencies, among others, within the relevant international standards. It serves as a basis for ensuring that if countries committed to finding solutions to displacement implement new restitution measures those, too, are compatible with international perspectives on these issues, including the Principles.

**Providing legislative drafting assistance** – Handbook users requested by the government in a country of origin to assist in the drafting of amendments to existing laws or proposed new restitution or related laws should note that the terms of due diligence requires them to review a range of national legislative sectors to determine their compatibility with international standards, including:

- Constitutional human rights provisions, including the right to housing
- Abandonment laws
- Housing, land and property laws adopted during the armed conflict
- Tenancy laws
- Land laws, agrarian laws and land reform
- Urban and rural planning laws
- Laws regulating eviction
- Laws regulating security of tenure
- Laws on adverse possession
- Laws regulating housing repairs/improvements
- Laws regulating state property (including social housing)
- Laws on public health and housing
- Laws on the restoration of housing, land and property rights
- Laws regulating property sales, exchanges and leases
- Indigenous Peoples’ land
- Laws determining succession rights to housing, land and property (particularly those of women)
- Laws regulating communal ownership of housing, land and property
- Position of statutory housing, land and property-related laws vis-à-vis customary
- Laws regulating expropriation
- Laws regulating housing credit and finance



## Frequently asked questions

### What if domestic restitution laws or procedures are incompatible with the Principles?

Although the Principles do not constitute a treaty, they are based on existing rights and obligations recognized within treaties and other binding laws. Most, if not all, States have ratified human rights law, humanitarian law and/or other treaties, and have in place domestic legislation on a subject related to these Principles. Accordingly, Principle 11 provides a basis grounded on the view that States cannot develop restitution laws or procedures that are incompatible with international standards, nor can they justify violations of international law based on the content of domestic law. This view is upheld by the Vienna Convention on the Law of Treaties, which states: “Every treaty in force is binding upon the parties to it and must be performed by them in good faith”<sup>157</sup> and the perspective “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.<sup>158</sup>

### Is the harmonization of national and international law ever imposed?

The imposition of law on governments unwilling to accept or enforce housing, land and property restitution rights of returning refugees or displaced persons is uncommon. Nonetheless, this has occurred on certain occasions when the State was unable or unwilling to carry out this legally required function. In the case of Bosnia and Herzegovina, for example, when authorities in both entities initially refused to amend some aspects of the post-conflict 1998 housing and property laws, the Office of the High Representative was forced to impose in 1999 new laws that were fully compatible with international standards.<sup>159</sup>

As noted in the section on Principle 3, Regulation 1999/10 of the United Nations Interim Administration Mission in Kosovo entitled the “Repeal of Discriminatory Legislation Effecting Housing and Rights in Property” led to the repeal of various housing, land and property laws that were used to discriminate against ethnic Albanians.<sup>160</sup>

### How are customary laws viewed in this regard?

Customary laws relevant to tenure, property ownership, land use, inheritance and so on are common throughout

much of the developing world. Handbook users should familiarize themselves with the scope and meaning of customary laws and, when appropriate and consistent with international standards, use them as a potentially useful tool in resolving housing, land and property disputes and securing restitution rights. In many countries, land relations are regulated based on customary law and such forms of regulation can provide fair, unbiased and equitable solutions to a range of housing, land and property disputes. When existing national legal systems are not effectively functioning in a timely, accessible and fair manner, common [traditional/*urf*] law may provide effective alternative remedies, either as an interim measure, or in a manner that complements the existing official system. When customary mechanisms are used, they must be, as follows:

- Legitimate in the eyes of the population concerned;
- Accessible to poor (and sometimes illiterate) people;
- Timely in their decision making;
- Transparent in their functioning;
- Non-discriminatory;
- Fair in their decisions;
- Compatible with both the national legal system and international human rights law.

Relying on traditional dispute resolution mechanisms can be an efficient way to alleviate the work of mass claim dispute resolution mechanisms and provide more rapid decisions at a lower cost to the State, particularly in countries where State structures are dysfunctional or absent at the local level. Although customary dispute resolution mechanisms have the advantage of the geographical and cultural proximity, rapidity, affordability, and social acceptance, it is important to acknowledge that the criteria of transparency and compatibility with national and international standards mentioned above may not be fulfilled. Traditional, tribal and customary dispute resolution mechanisms may reflect a patriarchal approach detrimental to women’s rights or outsiders to the community. They may also perpetuate power asymmetries between the parties. Decisions are often dependent on the personality of the traditional chief rather than firmly established principles. This leads to a lack of consistency of decisions and a lack of legal security for those using these mechanisms.

<sup>157</sup> United Nations, *Treaty Series*, vol. 1155, No. 18232, article 26.

<sup>158</sup> *Ibid*, article 27.

<sup>159</sup> Office of the High Representative, “Property rights/right to return”, 15 May 2000. Available at [www.ohr.int/ohr\\_archive/property-rights-right-to-return/](http://www.ohr.int/ohr_archive/property-rights-right-to-return/)

<sup>160</sup> See S/1999/1250, para. 52.

Moreover, as described in the section on Principle 4, even when principles are more clearly defined in Islamic law, traditional dispute resolution mechanisms may take decisions based on misguided interpretations. A careful analysis of power dynamics is also needed to understand to what extent the authority and legitimacy of traditional

authorities has been affected by the conflict. Using traditional or customary mechanisms to address housing, land and property disputes can be a valuable way to access justice in the absence of efficient formal alternatives. However, it should not undermine State institutions and laws and using them should not forfeit the right to present the same case to formal mechanisms.<sup>161</sup>

## Useful guidance

### United Nations and international guidance:

- United Nations Interim Administration in Kosovo, UMIK Regulation 2000/60 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission, 31 October 2000.

### Other sources:

- Sarah Adamczyk and Barbara Coll, “Customary dispute resolution mechanisms in the Gaza strip”, March 2012. Available at [www.flyktninghjelpen.no/globalassets/pdf/reports/customary-dispute-resolution-mechanisms-in-the-gaza-strip.pdf](http://www.flyktninghjelpen.no/globalassets/pdf/reports/customary-dispute-resolution-mechanisms-in-the-gaza-strip.pdf)
- Mariam Puttick, *From Crisis to Catastrophe: the Situation of Minorities in Iraq* (London, Minority Rights Group International, October 2014).
- Deborah Isser and Peter Van der Auweraert, “Land, property, and the challenge of return for Iraq’s displaced”, United Institute of Peace Special Report 221, April 2009. Available at [www.files.ethz.ch/isn/98743/sr221.pdf](http://www.files.ethz.ch/isn/98743/sr221.pdf)
- Brookings Institution and University of Bern. “Protecting internally displaced persons: a manual for law and policymakers”, October 2008. Available at [www.unhcr.org/50f955599.pdf](http://www.unhcr.org/50f955599.pdf)

<sup>161</sup> See A/HRC/47/37, para. 75.

## PRINCIPLE 12: National procedures, institutions and mechanisms

- 12.1 States should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims. In cases where existing procedures, institutions and mechanisms can effectively address these issues, adequate financial, human and other resources should be made available to facilitate restitution in a just and timely manner.
- 
- 12.2 States should ensure that housing, land and property restitution procedures, institutions and mechanisms are age and gender sensitive, and recognise the equal rights of men and women, as well as the equal rights of boys and girls, and reflect the overarching principle of the “best interests of the child”.
- 
- 12.3 States should take all appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and property restitution process. States should provide all relevant agencies with adequate financial, human and other resources to successfully complete their work in a just and timely manner.
- 
- 12.4 States should establish guidelines that ensure the effectiveness of all relevant housing, land and property restitution procedures, institutions and mechanisms, including guidelines pertaining to institutional organisation, staff training and caseloads, investigation and complaints procedures, verification of property ownership or other rights of possession, as well as decision-making, enforcement and appeals mechanisms. States may integrate alternative or informal dispute resolution mechanisms into these processes, insofar as all such mechanisms act in accordance with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.
- 
- 12.5 Where there has been a general breakdown in the rule of law, or where States are unable to implement the procedures, institutions and mechanisms necessary to facilitate the housing, land and property restitution process in a just and timely manner, States should request the technical assistance and cooperation of relevant international agencies in order to establish provisional regimes responsible for providing refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective restitution remedies.
- 
- 12.6 States should include housing, land and property restitution procedures, institutions and mechanisms in peace agreements and voluntary repatriation agreements. Peace agreements should include specific undertakings by the parties to appropriately address any housing, land and property issues that require remedies under international law or threaten to undermine the peace process if left unaddressed, while demonstrably prioritising the right to restitution as the preferred remedy in this regard.

## Key issues

Principle 12 recognizes that effective and competent judicial and administrative procedures for considering restitution claims can be critical cornerstones in efforts supporting the implementation of housing, land and property restitution rights. Though the precise form that this will take may differ from country to country, such measures are required for a restitution programme to be carried out in an orderly, legally consistent and comprehensive manner. The absence of effective, impartial and accessible judicial or other effective remedies can compromise the restitution process severely. Judicial bodies play a special role in upholding the credibility and fairness of the entire restitution process. This is particularly the case in post-conflict situations when internal political divisions render domestic institutions incapable of effectively administering restitution programmes, either due to institutional bias or lack of capacity and resources. Indeed, a conflict often results in a non-existent, malfunctioning or severely overburdened judicial system in which fair and impartial procedures for resolving housing, land and property disputes are unavailable.

Even where the local judicial institutions function normally, the circumstances and massive caseload involved in restitution efforts following large-scale displacement may make resolving housing, land and property disputes through the regular courts challenging, though not impossible. It is, therefore, important to assess if existing national mechanisms and institutions can effectively address restitution issues and provide assistance when required, in accordance with Principle 12.1. For instance, in 2013, it was argued that while there are some blind spots and areas in need of improvement, the “existing Iraqi civil law system is an adequate legal scheme for providing restitution to property owners”, who were displaced and dispossessed of their housing, land and property after 2003. By devoting adequate resources to the Iraqi civil courts, increasing institutional capacity and making minor legislative modifications, the Government was deemed able to address the challenges.<sup>162</sup> On the contrary, it was deemed necessary to establish dedicated mechanisms to deal with pre-2003 restitution claims in the country. The Iraq Property Claims Commission (2004) and its successor the Commission for the Resolution of Real Property Disputes (2006) had already received more than

130,000 claims by September 2007.<sup>163</sup> Leaving the courts to deal with such a caseload could result in unacceptable delays for the claimants and may also risk having a serious impact on the normal work of the court system, thus endangering the return to the rule of law. While judicial proceedings are suitable for dealing with isolated cases of property restitution, they may be much less well-equipped to deal with tens or hundreds of thousands of such cases, which requires a more flexible and pragmatic approach.

Creating new mechanisms – administrative, judicial and quasi-judicial in nature – to find ways to resolve such disputes is increasingly commonplace, as the experiences in Iraq, Afghanistan, Bosnia and Herzegovina, Kosovo, Tajikistan, and elsewhere attest. These mechanisms can be purely domestic, as is the case, for example, in Iraq, or international, and then domestic under international supervision as, for example, in Bosnia and Herzegovina. What is most suitable, in any given case, depends on the national and international context. But in many settings, competing claims on a dwelling or land parcel have no formal means of resolution or of being officially recognized and eventually registered by the governing authorities unless a special body is established to address these concerns.

At the same time, such bodies also could have a range of possible drawbacks that need to be considered. For instance, in Bosnia and Herzegovina, decisions issued by the Commission on Real Property Claims (CRPC) were not immediately enforceable by local authorities, and it took five years for a law on implementation of CRPC decisions to be introduced. In addition, CRPC decisions were limited to determination of property ownership and included no reference to the rights of renters or secondary occupants. Consequently, the persons holding CRPC decisions had to go through the local administrative process to have their decision implemented, which made them dependant on the functioning of the domestic housing office system. In Libya, an estimated 75,000 properties were confiscated under the Gaddafi Government’s Law No. 4 and are potentially subject to restitution claims. By 2011, some 25,000 claims had been filed with the Compensation Committee, which was formed in 2006. However, these have not been adjudicated, nor have potential claims for housing, land and property violations since 2011 been surveyed or subject to systematic adjudication.<sup>164</sup>

<sup>162</sup> Dan E. Stigall, “Refugees and legal reform in Iraq: the Iraqi Civil Code, international standards for the treatment of displaced persons, and the art of attainable solutions”, in *Land and Post-Conflict Peacebuilding*, Jon Unruh and Rhodri C. Williams, eds. (Routledge, 2013), p. 234.

<sup>163</sup> Peter Van der Auweraert, “Property restitution in Iraq”, presentation at the Symposium on Post-Conflict Property Restitution, 6–7 September 2007. Available at <https://2001-2009.state.gov/documents/organization/98032.pdf>

<sup>164</sup> Suliman Ibrahim and Jan Michiel Otto, “Resolving real property disputes in post-Gaddafi Libya, in the context of transitional justice”, final report of a Libyan-Dutch collaborative research project (Leiden, Netherlands, The Centre for Law and Society Studies, Benghazi University and Van Vollenhoven Institute for Law, Governance and Society, Leiden University), p. 20.

### Box 14: Conducting a housing, land and property restitution assessment

A housing, land and property restitution assessment could help facilitate the process of designing the appropriate procedures, institutions and mechanisms to secure restitution rights or the enhancement of existing procedures, institutions and mechanisms. It could include the following elements:

1. Background of the structural issues related to housing, land and property (pre- and post-conflict) and root causes of the conflict or disaster (including unequal access to land, weak land administration systems, uncontrolled urbanization) and return dynamics;
2. Summary of the applicable national housing, land and property framework, as well as land tenure system(s);
3. Overview of violations of housing, land and property rights according to national and international law and the context in which these violations took place;
4. When applicable, results of housing, land and property damage assessments and housing stock inventories;
5. Overview of the main issues that will likely hinder the recovery of housing, land and property (including the political, legal, institutional and social challenges);
6. Presentation and analysis of relevant responses to the housing, land and property violations to date, with a particular focus on efforts to secure restitution rights, including administrative and/or judicial structures set up to deal with large-scale secondary occupation, dispute resolution mechanisms, compensation schemes, and other characteristics;
7. Durable solutions intention surveys and preference in terms of housing, land and property remedy;
8. Conclusion with an inventory of housing, land and property rights restitution challenges and opportunities.

The scale of the challenges, continued insecurity and lack of resources may require a **phased approach towards conducting the assessment**. For instance, the International Organization for Migration (IOM) Iraq conducted an initial housing, land and property assessment between 2014 and 2016, based on a limited number of focus group discussions with selected IDPs. The assessment was centred on five locations throughout Iraq, with a focus on the northern governorates (Diyala, Ninewah and Salah al Din). IOM teams also interviewed the participants individually before the focus group discussions to obtain information on personal circumstances related to housing, land and property issues. Despite the relatively small respondent group, the findings were sufficient to indicate that the most recent displacement crisis had generated multiple housing, land and property issues and to guide additional surveys to confirm the scope of the housing, land and property issues in various locations.<sup>165</sup> In the Syrian Arab Republic, UN-Habitat contributed to the remedial effort with a city profile of Aleppo in 2014 that assessed the damage caused by the conflict in the opposition-held city. It was able to determine the degree of urban functionality, changes in the economy and service provisions and set priorities for intervention amid the destruction of the city.<sup>166</sup>

**Capacity development needs assessments** of public institutions in all spheres of local, regional and central governments may be needed. The type of restitution and compensation process chosen should be adapted to the expected size of the claim load and consider the capacity of existing State institutions. A whole-of-government approach should be adopted to ensure coherence with other government policies related to housing, land and property and restitution.

<sup>165</sup> Ina Rehema Jahn, "Housing, land and property (HLP) issues facing returnees in retaken areas of Iraq: a preliminary assessment", preliminary assessment for Land and Property Reparations Division, Department of Operations and Emergencies, IOM, September 2016. Available at <https://arablandinitiative.gln.net/sites/default/files/2023-12/docs/a-preliminary-assessment-of-housing-land-and-property-issues-facing-returnees-in-retaken-areas-of-iraq.pdf> and Ina Rehema Jahn, "A Preliminary assessment into housing, land and property issues caused by the 2014 displacement crisis in Iraq". Available at [www.iom.int/sites/default/files/our\\_work/DOE/LPR/A-Preliminary-Assessment-of-Housing-Land-and-Property-Rights-Issues-Caused-by-the-Current-Displacement-Crisis-in-Iraq.pdf](http://www.iom.int/sites/default/files/our_work/DOE/LPR/A-Preliminary-Assessment-of-Housing-Land-and-Property-Rights-Issues-Caused-by-the-Current-Displacement-Crisis-in-Iraq.pdf)

<sup>166</sup> UN-Habitat, "City profile Aleppo: multi sector assessment" (May 2014). Available at <https://policycommons.net/artifacts/1418714/city-profile-aleppo-multi-sector-assessment/2032983/>

**Box 14: Conducting a housing, land and property restitution assessment (Contd...)**

A review of the legal framework is essential to understand how current laws would affect housing, land and property restitution and to ensure security of tenure upon return. In the course of the eventual housing, land and property restitution, specific expertise is required to address restitution issues, such as judges and notaries. An assessment of the availability and skills of these professionals would also be important to guide the next steps.

Ideally, the assessment is carried out by relevant government institutions. However, they may lack specific expertise and their institutional capacity may have been weakened, especially when emerging from disaster, conflict, fragility, occupation or other similar events. In addition, authorities may be perceived as an accomplice to conflict and displacement. Accordingly, United Nations agencies and (international) organizations should consider conducting the assessment, when possible, in cooperation with the relevant government institutions.

## Opportunities for applying Principle 12

**Resolving ongoing housing, land and property disputes** – In situations of mass return, as refugees and displaced persons begin to return to their original homes and secondary occupants need to find alternative accommodation, and as opportunists attempt to take advantage of the breakdown in law and order, housing, land and property restitution disputes are commonplace. Such disputes – which may result in violence and serious insecurity – can take numerous forms. These include, for example, attempts by displaced persons and refugees to physically reclaim their former homes that are occupied by members of other ethnic groups; housing, land and property claims made by persons without documentation to prove their claims, but hold legitimate rights; determining rights in instances where current occupants hold “lawful titles”, but where returnees do not; determining rights following unregistered or unofficial transfers of property; claims by *bona fide* purchasers of property after it was initially expropriated; claims for improvements made on housing, land and property legally owned by returning refugees and displaced persons; claims on the determination of boundaries; and claims of tenancy rights and cultivation rights. Restitution processes provide a means for developing fair, rights-based mechanisms to address such disputes in a consistent and equitable manner.

**Capacitating localized property dispute resolution mechanisms** – In some situations, local or traditional dispute resolution mechanisms may be involved in resolving competing ownership claims and other housing, land and property disputes. The Doha Document for Peace in Darfur, as an example, while setting up a dedicated housing, land and property restitution mechanism (see box 15), stipulates that “[w]ithout prejudice to the jurisdiction of the courts, traditional mechanisms may be used to settle [housing, land and property] disputes arising from the return

process, provided they are consistent with the international principles of human rights” (article 52(267)).

Another example involves Iraq, where dispute resolution dynamics changed significantly after the Islamic State in Iraq and the Levant took over significant parts of Iraqi territory starting in 2014 and the Government’s weakened institutional capacity led to the emergence of new local dispute resolution bodies, whether of a political, religious or informal nature. Prior to 2014, a majority (58 per cent) of respondents to an IOM assessment survey indicated that official central governmental bodies were mainly facilitating housing, land and property dispute resolutions across the assessed governorates, namely Salah al Din, Diyala and Ninewa. A notable exception to this was Diyala, where religious bodies were a commonly used alternative to official channels even before 2014.<sup>167</sup> The Principles can guide such informal dispute resolution mechanisms in the processing of claims by ensuring the adherence to restitution objectives within the applicable normative framework. Otherwise, over time, the dispute resolution mechanisms may deliver outcomes that lead to discontent and the potential for renewed conflicts.

**During peace negotiations** – Principle 12.6 underscores the importance of including restitution rights and mechanisms in peace agreements to ensure that housing, land and property challenges are adequately addressed as part of a peace and/or return process. The aforementioned Doha Document for Peace in Darfur, for example, includes a dedicated article on housing, land and property restitution and even notes details on the mechanism created to fulfil the right to restitution (see box 15).<sup>168</sup> Lessons can also be learned from similar experiences in other regions. For example, negotiation-outcome documents outlining the authority and competencies of the various post-conflict mechanisms that were put in place in the Balkans, East Timor and elsewhere have not included housing, land and property concerns as prominently as they should have.

<sup>167</sup> Jahn, “Housing, land and property (HLP) issues facing returnees in retaken areas of Iraq: a preliminary assessment”, p. 18.

<sup>168</sup> Doha Document for Peace in Darfur, 2011, article 52. Available at [https://unamid.unmissions.org/sites/default/files/ddpd\\_english.pdf](https://unamid.unmissions.org/sites/default/files/ddpd_english.pdf)

### Box 15: Housing, land and property restitution and the peace agreement for Darfur (Sudan)

Some peace agreements include clauses on housing, land and property restitution and the institutions responsible for implementing restitution processes. For example, the 2011 Doha Document for Peace in Darfur, in article 52(260), states that “IDPs and refugees have the right to have their houses, land and properties which they were unlawfully deprived of, restored to them. In the event that recovery of such property is not possible, they shall be entitled to compensation, in accordance with international principles.” The Doha Document confirms that IDPs and refugees have the right to restitution whether they choose to return to their place of origin or to resettle elsewhere.

The Parties to the Doha Document (article 51) call for the creation of a property claims and restitution committee. IDPs, refugees and other conflict-affected victims in Darfur may submit their restitution claims to the property claims and restitution committee.

If the claimant is found to be the lawful owner, the committee will order the restitution of the housing, land and property to the claimant. If this is not possible, compensation will be provided. Under the Doha Document the committee is mandated to develop more detailed procedures for the restitution process, which need to be accessible, just and free of charge, among other things. The procedures must include specific measures to ensure that women and orphans are able to participate on a fully equal basis in the restitution process. The committee will not recognize as valid any illegal property transaction including any transfer that was made under duress or made without free and informed consent. Finally, the Parties to the Doha Document notes that the Government of Sudan is ultimately responsible for ensuring property restitution to the lawful owner.<sup>169</sup>

Peace negotiations also provide opportunities to address long-standing gender inequalities regarding housing, land and property rights by ensuring equal restitution rights for women, especially for widows and female-headed households following displacement and conflict.

**Judicial sector reform** – In several cases of widespread displacement, dispossession and destruction in the Middle East and North Africa region, a common feature has been the loss of faith in the judiciary, including cases of deep distrust or lack of confidence dating from before the conflict or breakdown of other State institutions. The rehabilitation of the judicial system is a mid- to long-

term objective that should be pursued in parallel with the establishment of a restitution and compensation mechanism in the short term. The provision of remedies to dispossession contributes to durable solutions, and to social cohesion and peacebuilding. The obligation that arises from International Covenant on Civil and Political Rights also applies to transitional justice processes in which remedial efforts may call for special adjudication mechanisms and chambers to determine rights and liabilities for restitution. To guard against bias and restore faith in the justice system, such mechanisms could involve mixed panels with judges from other countries with restitution experience serving on a temporary basis.

<sup>169</sup> Ibid.

## Frequently asked questions

### Which issues should be examined to monitor the effectiveness of restitution measures?

To operationalize the Pinheiro Principles, States should establish guidelines that ensure the effectiveness of all relevant housing, land and property restitution procedures, institutions and mechanisms. To develop these comprehensive guidelines, several issues must be clarified:

- The jurisdiction of the restitution body;
- The types of claims that can be submitted to a given mechanism;
- Who can present such claims; how far back in time can the claims go;
- How to ensure that an independent appeals institution will address errors in laws and fact without considerably delaying the restitution process;
- What role, if any, will be played by traditional or non-judicial methods of conflict resolution especially in countries without an independent or functioning judiciary;
- To what extent is the international community required to assist the process;
- Whether decisions are temporary or permanent in nature;
- To what extent can administrative procedures achieve justice;
- How to ensure the enforceability of decisions if secondary occupants are unwilling to vacate voluntarily.

### What is the role of local courts in restitution processes?

Ideally, the conferral of housing, land and property restitution rights and enforcement of them should be a function handled by local decision-making bodies and courts in countries of origin. However, even when local courts are fair, impartial, competent and adequately resourced to deal with potentially large numbers of restitution claims, practice has shown that a combination of judicial mechanisms together with administrative processes, community mediation, reliance on customary law when appropriate and the provision of legal aid may yield the most successful restitution outcomes.

Practitioners need to bear in mind that it often is up to local courts to enforce decisions on restitution claims issued by international restitution bodies.<sup>170</sup> That said, lack of competence or public trust in the judiciary may make it necessary to rely on non-judicial processes, or to retrain or rehabilitate judges for them to function properly in adjudicating housing, land and property rights and restitution claims. A vetting procedure determining competence and ethics may be a prerequisite for local courts to assume their role in restitution.

### Do mass claims affect due process?

Setting up mass claims mechanisms for housing, land and property restitution often requires adopting simplified procedures to accelerate the processing of claims and provide access to remedy more rapidly to support durable solutions and peacebuilding.<sup>171</sup> While some have considered that mass claim processing techniques are incompatible with due process,<sup>172</sup> such procedures can be justified by certain presumptions based on the prior establishment of specific patterns of human rights violations. Displacements during a certain period can be deemed forced and their forced nature, therefore, does not need to be proven due to the known circumstances of the conflict. The acceptance of lower evidentiary standards to prove identity and ownership are also considered a good practice to respond to the general lack of documentation and loss of registries resulting from conflicts, disasters and displacements.<sup>173</sup>

### Can non-judicial remedies achieve housing, land and property restitution?

Non-judicial remedies can sometimes be more effective and have a far-reaching effect in providing restitution to larger numbers of people. They also may operate in a shorter time frame than judiciary-based restitution procedures. The South African restitution programme, for instance, moved from a judiciary-based system to a more administrative process, once it became clear that a purely judicial approach would be overly burdensome, result in serious delays in enforcing restitution rights and ultimately not be in the best interests of those entitled to housing and property restitution rights. In other countries, alternative dispute resolution mechanisms sometimes based on customary [traditional] law may achieve more rapid restitution results than judicial remedies.

<sup>170</sup> Dan E. Stigall, "Courts, confidence, and claims commissions: the case for remitting to Iraqi Civil courts the tasks and jurisdiction of the Iraqi property claims commission (IPCC)", *The Army Lawyer* (2005).

<sup>171</sup> Veijo Heiskanen, "The United Nations Compensation Commission (Volume 296)", in *Collected Courses of the Hague Academy of International Law* (2002).

<sup>172</sup> Hans van Houtte and Lasson Yi, "Due process in international mass claims," *Erasmus Law Review*, vol 1, No. 2 (2008).

<sup>173</sup> Rhodri C. Williams, E. Ferris and K. Koser, "Protecting internally displaced persons: a manual for law and policy makers" (Washington, D.C., Brookings Institution, 2008), chap. 8. Available at [www.brookings.edu/research/protecting-internally-displaced-persons-a-manual-for-law-and-policy-makers/](http://www.brookings.edu/research/protecting-internally-displaced-persons-a-manual-for-law-and-policy-makers/)



## Useful guidance

### United Nations and international guidance:

- IOM, Global Protection Cluster on Housing, Land and Property and Solutions Alliance, *Guidance Note: Integrating Housing, Land and Property Issues into Key Humanitarian, Transitional and Development Planning Processes* (Geneva, 2018).
- COHRE, *Sources No. 7: Legal Resources on Housing and Property Restitution for Refugees and IDPs* (Geneva, 2001).
- Ina Rehema Jahn in collaboration with Peter van der Auweraert and Igor Cvetkovski, “Housing, land and property (housing, land and property) issues facing returnees in retaken areas of Iraq”, a preliminary assessment for Land, Property and Reparations Division, Department of Operations and Emergencies, IOM, September 2016. Available at [www.iom.int/sites/g/files/tmzbdl486/files/our\\_work/DOE/LPR/Hijra-Amina-HLP-return-assessment.pdf](http://www.iom.int/sites/g/files/tmzbdl486/files/our_work/DOE/LPR/Hijra-Amina-HLP-return-assessment.pdf)
- OHCHR, *Rule-of-Law Tools for Post-conflict States: Maximizing the Legacy of Hybrid Courts* (United Nations publication, 2006). Available at [www.ohchr.org/sites/default/files/Documents/Publications/HybridCourts.pdf](http://www.ohchr.org/sites/default/files/Documents/Publications/HybridCourts.pdf)
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- Rhodri C. Williams, E. Ferris and K. Koser, “Protecting internally displaced persons: a manual for law and policy makers (Washington, D. C., Brookings Institution, 2008), chap. 12. Available at [www.brookings.edu/research/protecting-internally-displaced-persons-a-manual-for-law-and-policymakers/](http://www.brookings.edu/research/protecting-internally-displaced-persons-a-manual-for-law-and-policymakers/)
- Suliman Ibrahim and Jan Michiel Otto, “Resolving real property disputes in post-Gaddafi Libya, in the context of transitional justice”, final report of a Libyan-Dutch collaborative research project (Leiden, Netherlands: The Centre for Law and Society Studies, Benghazi University and Van Vollenhoven Institute for Law, Governance and Society, Leiden University), p. 20.
- Joseph Schechla, “Restoring values: institutional challenges to providing restitution and compensation for Iraqi housing and land rights victims” *نكسلاو ضرألا قوقح كاهتنا اياحض ضيوعت ةيلمع هجاوت يتلا ةيسسؤملا تايديحتلا: ميقلال ةداعتسا* (Cairo, Housing and Land Rights Network, August 2005). Available at [www.hlrn.org/img/publications/restoring\\_values.pdf](http://www.hlrn.org/img/publications/restoring_values.pdf)

## PRINCIPLE 13: Accessibility of restitution claims procedures

- 13.1 Everyone who has been arbitrarily or unlawfully deprived of housing, land and/or property should be able to submit a claim for restitution and/or compensation to an independent and impartial body, to have a determination made on their claim and to receive a notice of such a determination. States should not establish any pre-conditions for filing a restitution claim.
- 
- 13.2 States should ensure that all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge, and are age and gender-sensitive. States should adopt positive measures to ensure that women are able to participate on a fully equal basis in this process.
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- 13.3 States should ensure that separated and unaccompanied children are able to participate and are fully represented in the restitution claims process, and that any decision in relation to the restitution claim of separated and unaccompanied children is in compliance with the overarching principle of the “best interests of the child”.
- 
- 13.4 States should ensure that the restitution claims process is accessible for refugees and other displaced persons regardless of their place of residence during the period of displacement, including in countries of origin, countries of asylum or countries to which they have fled. States should ensure that all affected persons are made aware of the restitution claims process, and that information about this process is made readily available, including in countries of origin, countries of asylum or countries to which they have fled.
- 
- 13.5 States should seek to establish restitution claims-processing centres and offices throughout affected areas where potential claimants currently reside. In order to facilitate the greatest access to those affected, it should be possible to submit restitution claims by post or by proxy, as well as in person. States should also consider establishing mobile units in order to ensure accessibility to all potential claimants.
- 
- 13.6 States should ensure that users of housing, land and/or property, including tenants, have the right to participate in the restitution claims process, including through the filing of collective restitution claims.
- 
- 13.7 States should develop restitution claims forms that are simple and easy to understand and use and make them available in the main language or languages of the groups affected. Competent assistance should be made available to help persons complete and file any necessary restitution claims forms, and such assistance should be provided in a manner that is age and gender sensitive.
- 
- 13.8 Where restitution claims forms cannot be sufficiently simplified owing to the complexities inherent in the claims process, States should engage qualified persons to interview potential claimants in confidence, and in a manner that is age and gender sensitive, in order to solicit the necessary information and complete the restitution claims forms on their behalf.
- 
- 13.9 States should establish a clear time period for filing restitution claims. This information should be widely disseminated and should be sufficiently long to ensure that all those affected have an adequate opportunity to file a restitution claim, bearing in mind the number of potential claimants, potential difficulties of collecting information and access, the extent of displacement, the accessibility of the process for potentially disadvantaged groups and vulnerable individuals, and the political situation in the country or region of origin.

- 13.10 States should ensure that persons needing special assistance, including illiterate and disabled persons, are provided with such assistance in order to ensure that they are not denied access to the restitution claims process.
- 
- 13.11 States should ensure that adequate legal aid is provided, if possible free of charge, to those seeking to make a restitution claim. While legal aid may be provided by either governmental or non-governmental sources (whether national or international), such legal aid should meet adequate standards of quality, non-discrimination, fairness and impartiality so as not to prejudice the restitution claims process.
- 
- 13.12 States should ensure that no one is persecuted or punished for making a restitution claim.

## Key issues

While Principle 12 covers the necessity of establishing effective restitution procedures, mechanisms and institutions, Principle 13 recognizes that such measures must be accessible for those that they are meant to benefit. Restitution claims procedures must be physically, verbally and economically accessible and should provide special measures to ensure that marginalized groups and persons in vulnerable situations can benefit from their services in an equitable and just manner. Restitution processes should also ensure that victims can access and understand information on the application procedures and other key issues. This may require efforts to disseminate information in relevant languages in countries of asylum and other areas of displacement. Claims procedures should also be free of charge, enforceable and resolve all claims fairly and efficiently.

In line with this, the 2006 Darfur Peace Agreement, for instance, requests relevant authorities to “establish restitution procedures, which must be simple, accessible, transparent and enforceable. All aspects of the restitution claims process, including appeals procedures, shall be just, timely, accessible, free of charge, and age and gender sensitive. The procedures shall contain positive

measures to ensure that women are able to participate on a fully equal basis in the process.”<sup>174</sup> Essentially, accessible restitution procedures imply the enjoyment of various human rights, including the rights to information, freedom of expression, freedom of movement, freedom of association and freedom of peaceful assembly, as well as the human rights to legal personality, and freedom of thought, religion and belief. These process-related rights are essential to the realization of the outcome of restitution processes.

Establishing a specific period during which restitution claims can be submitted is an integral part of the restitution process and can contribute towards establishing more predictability in the housing market. Determining the appropriate period for the submission of claims should consider the context of conflict, disaster and displacement and ensure that victims are realistically able to make their claims within the set time frame. Restitution processes should include measures to address additional or very specific cases that could not be submitted within the set period. Similarly, any statute of limitations that normally exists and restricts the option of appeal against court decisions should be suspended to consider the circumstances of the conflict, disaster and displacement that may prevent people from contesting such decisions.

<sup>174</sup> Darfur Peace Agreement, 2006, para. 195. Available at <http://ucdp.uu.se/downloads/fullpeace/Sud%2020060505.pdf>

**Box 16: The one-year period of Law No. 10 of the Syrian Arab Republic<sup>175</sup>**

Law No. 10 of 2018 (and Law No. 42 of 2018 amending certain articles of Law No. 10) in relation to the creation of “urban development zones” in the Syrian Arab Republic does not entail a standard restitution process, but nevertheless illustrates the importance of establishing reasonable and appropriate time frames for the submission of housing, land and property restitution claims. Article 2, clause 1 of the Law stipulates that within one month of issuing a decree establishing an urban development zone, the responsible administrative entity must publish an announcement in at least one local newspaper, one visual and audio communication method, its website and on its bulletin boards and notice boards in the area. This announcement calls on owners to claim their rights over property in designated urban development zones within one calendar year from the date of the announcement. The claims process serves to confirm their ownership over the property and the level of compensation that they are entitled to during the expropriation process that is part of the urban development programme. Claims must be submitted in the Syrian Arab Republic, either in person, through family members or by a designated representative via a power of attorney. Property that is not claimed within the one-year period will revert to the Government of Syrian Arab Republic.

Considering the high numbers of Syrians refugees and displaced persons and the difficult circumstances of their displacement, the aforementioned announcement in mostly local media may not be easily accessible to many of them. There is also a general lack of information about the Law and applicable procedures and limited access to legal advice. In this context, the one-year period could prejudice the property rights of refugees and displaced persons.

## Opportunities for applying Principle 13

**Public information and awareness-raising** – Refugees and displaced persons must have sufficient information about the housing, land and property restitution mechanism. In Iraq, for instance, many returnees were reportedly unaware of the work of the Iraq Property Claims Commission in 2016.<sup>176</sup> They and other affected populations had limited access to information and, therefore, limited access to redress and justice. This finding highlights the need for effective efforts to ensure access to information about options to seek redress for violation of housing, land and property rights.<sup>177</sup> The information must be reliable, sufficient and expressed in writing, orally or by other reliable media in a language understood by all affected persons. High-quality and wide distribution of public information are essential so that anyone concerned understands the methods and procedures involved in submitting and adjudicating housing, land and property rights claims. A combination of official channels, publicity and awareness campaigns in cooperation with independent media and the participation of civil society organizations can be applied. Media and civil society

organizations can scrutinize the claims process to ensure that justice prevails. Public access to records and claims is a key principle to ensure transparency and contribute to accountability through the legitimacy of the process and its outcomes.

Dialogue needs to be included in the process, especially between victims and secondary occupants, and/or counterclaimants to achieve consent and mutual understanding in housing, land and property rights restitution decisions and settlements. Using social media, with certain precautions, could help bring stakeholders together. The process and outcomes should be void of stigma for all parties, and the restoration of the reputation of affected populations may be necessary to achieve true restitution and rehabilitation for past discrimination.<sup>178</sup> The messaging around the restitution process should stop stigmatization suffered in advance of dispossession or subjected to “collective guilt” impeding restitution. Similarly, the restitution process should avoid new stigmatization, such as collective blame against secondary occupants. The means for such messaging could involve localized and public *diwan* or other forms of consultative meetings (*mushawarat*).

<sup>175</sup> Khaled Al-Helou, Riyad Ali and Anwar Majanni, *The Property Issue and its Implications for Ownership Rights in Syria* (Istanbul, The Day After, 2019).

<sup>176</sup> In 2016, only 17.5 per cent of returnee respondents and 27.5 per cent of key informants in Salah al-Din said that they were aware of community members having pending claims before the Iraq Property Claims Commission. In Diyala, this figure was 50 per cent of returnees and 50 per cent of key informants. Meanwhile, no respondents in Ninewa knew of a community member that had a pending claim at the Iraq Property Claims Commission. Jahn, “Housing, land and property (HLP) issues facing returnees in retaken areas of Iraq: a preliminary assessment”.

<sup>177</sup> Jahn, “Housing, land and property (HLP) issues facing returnees in retaken areas of Iraq: a preliminary assessment”.

<sup>178</sup> See General Assembly resolution 60/147, para. 22.

**Ensuring equal access to all potential restitution claimants** – Restitution claims processes should be structured to provide permanent housing, land and property solutions for all stakeholders, including owners, tenants and others with affirmed restitution rights, preferably in one's original home. Claims processing centres and offices should be established throughout the areas where claimants reside, so that it is easy to reach the nearest office or, if needed, mobile teams should be deployed to such areas. This may include neighbouring countries where refugees reside awaiting return. Independent legal aid centres giving expert legal assistance to returnees can be useful in independent claims processes. Restitution bodies must have free access to all property records and accept various types of evidence. Special measures and institutions should be developed for collective restitution claims. In addition to administrative access, the centres operating in the restitution process must be accessible physically and be in sufficient number and distribution to avoid any undue economic or physical burden on returnees to reach them. They must be equally

accessible for men and women, and equipped with easy-access facilities and assistance for persons with disabilities and older persons.

**Out-of-country processing** – Creating opportunities for all victims, including refugees, to participate in a restitution programme following a period of conflict can bring a sustainable solution and contribute towards the reconciliation within a country. Often, meaningful access can be given only by allowing claimants to file a claim in the country where they reside. Implementing out-of-country processing brings logistical and financial challenges and complexity to the claims resolution process. While equal treatment between in-country and out-of-country claimants must be ensured, separate outreach campaigns bringing assistance to out-of-country claimants who lack access to evidence, such as property registries, might be needed. At the peak of the work of the Commission for Real Property Claims in Bosnia and Herzegovina in 1999, seven of its 23 regional offices were in Western European countries hosting large numbers of refugees.

### Box 17: Registering housing, land and property claims of Syrian refugees in Lebanon and Iraq in preparation for future restitution efforts<sup>179</sup>

Since 2020, UN-Habitat has been recording housing, land and property claims of Syrian refugees in Lebanon and Iraq to their housing, land and property in the Syrian Arab Republic. The project records information regarding refugees' housing, land and property and safeguards the supporting housing, land and property documentation through a rigorous participatory and voluntary enumeration process undertaken in the location of displacement, at no cost for the beneficiaries. The project is supported by an adaptation of the Social Tenure Domain Model (STDM), a participatory land tool for recording people to land relationships along the continuum of land rights independently from their level of formalization. The intervention alleviates the burden of evidence from the beneficiaries, prevents further loss of housing, land and property evidence as the time of displacement increases, prepares the groundwork for future property restitution (including repossessing properties illegally occupied and transacted) and compensation for damaged or destroyed properties. The project, expected to end in 2024, targets 90,000 refugees. As of mid-2023, more than 38,000 refugees registered their claims and safeguarded their housing, land and property documents. All member of the households were recorded in the housing, land and property claims, including women and children. Claims submitted by women account for nearly 40 per cent of the total (see boxes 21 and 22 for more information on STDM).

**Determining the legal standing of current occupants and other third parties** – To achieve fair and sustainable solutions, access to restitution claims procedures must be given to all parties concerned, including those who are occupying or using the claimed housing, land and property. The notification of current occupants and other third parties about pending restitution claims poses a large administrative burden on programmes, and the consideration of their respective rights to housing, land and property adds considerable complexity to the decision-making process. Claims restitution procedures must be designed to deal with third-party participation in a fair and efficient manner. Property claims programmes

have taken different approaches to the problem of legal standing of third parties. For instance, under the rules governing the claims resolution process of the Housing and Property Claims Commission in Kosovo, the current occupant can file a counterclaim upon notification that a claim had been filed to the property he/she was occupying. Similarly, the Commission on the Resolution of Real Property Disputes in Iraq would notify current occupants and other identified interested parties that a claim had been filed for the property and invited them to respond to the claim to protect their own rights to that property. If personal notification is not possible, then it could be provided through other public means of notification.

<sup>179</sup> Arab Land Initiative, "Safeguarding evidence of housing, land and property rights of Syrian refugees" (n.d.). Available at <https://arablandinitiative.gln.net/safeguarding-evidence-of-housing-land-and-property-rights-of-syrian-refugees-0>

## Frequently asked questions

### How can legal assistance facilitate the claims process?

Legal assistance programmes designed to assist restitution claimants are increasingly seen as major contributors to the implementation of restitution rights. Assistance increases the accessibility of restitution claims procedures and ensures that persons are not prevented from benefiting from such procedures due to barriers associated with navigating complex or intimidating legal systems. Legal assistance may be provided by international or local organizations. National human right Institutions can also play an important role in this process, particularly in cases of collective dispossession of housing, land and property.

Legal assistance can provide multiple services to claimants during a restitution process. Assistance in past programmes has included the preparation of information leaflets that explain the restitution process and contain detailed instructions on how to fill out claim forms. Programmes may also organize public information sessions, set up call centres or hotline numbers to address questions and conduct in-person interviews of claimants by programme staff at the claim-intake stage. A training-of-trainers approach may expand the reach of such assistance and used to facilitate the provision of legal assistance by another (local) organization, especially when an international organization may cease operations in the country.

### Box 18: Legal assistance by United Nations agencies and (international) non-governmental organizations

Various (international) organizations and agencies implement or support efforts aimed at providing legal assistance to refugees and displaced persons in claiming their housing, land and property restitution rights, among other services. For example, the Information, Counselling and Legal Assistance programme of the NRC has helped thousands of refugees and displaced persons exercise their housing, land and property restitution rights in, Iraq, Jordan, Lebanon, the Occupied Palestinian Territory, the Syrian Arab Republic and Yemen. It works with in-house lawyers, local legal aid providers and private lawyers to prevent housing, land and property violations, such as home demolitions and evictions, and helps beneficiaries obtain or reclaim property documentation, file compensation claims and resolve housing, land and property disputes. These types of programmes may contribute towards increased security of tenure through confirmation of housing, land and property ownership or assistance with written tenancy leases. Information, counselling, and legal assistance programmes also work with local authorities on reconstruction initiatives, housing, land and property restitution programmes and access to cadastral records.

The United Nations High Commissioner for Refugees also offers legal assistance in cooperation with (local) partners, serving thousands of refugees and displaced persons in Iraq,<sup>180</sup> the Syrian Arab Republic<sup>181</sup> and Lebanon,<sup>182</sup> among other countries. The global online “Rights in Exile Programme” improves the protection of refugee rights by networking legal assistance providers with resources and training, and facilitating access to free legal assistance and information for refugees around the world. Among its functions are translation services and country-specific directories of locally accessible pro-bono legal services for refugees.<sup>183</sup>

<sup>180</sup> UNHCR, “UNHCR provides legal assistance for displaced Iraqi families [EN/AR/KU]”, 27 February 2017.

Available at <https://reliefweb.int/report/iraq/unhcr-provides-legal-assistance-displaced-iraqi-families-enarku>

<sup>181</sup> UNHCR, “Legal assistance in Syria”, factsheet, January-March 2023, Available at [www.unhcr.org/sy/wp-content/uploads/sites/3/2023/08/Legal-Aid-Factsheet-Q1-2023.pdf](http://www.unhcr.org/sy/wp-content/uploads/sites/3/2023/08/Legal-Aid-Factsheet-Q1-2023.pdf)

<sup>182</sup> UNHCR, “Help Lebanon - Legal aid”. Available at <https://help.unhcr.org/lebanon/en/welcome/legal-aid/>

<sup>183</sup> Amera International, Rights in Exile Platform. Available at <https://rightsinexile.org/>

## Useful guidance

### United Nations and international guidance:

- UNHCR, “Legal assistance in the context of internal displacement”, Guidance Note 5, *Handbook for the Protection of Internally Displaced Persons* (New York, 2007).
- UNHCR and others, *Handbook on Internal Displacement for National Human Rights Institutions* (2021). Available at <https://www.unhcr.org/media/handbook-internal-displacement-national-human-rights-institutions#:~:text=This%20handbook%20analyses%20the%20role,other%20stakeholders%20around%20the%20world>

### Other sources:

- NRC and Displacement Solutions, “An introductory guide to understanding and claiming housing, land and property restitution rights in Myanmar: questions and answers”, March 2017. Available at <https://reliefweb.int/report/myanmar/introductory-guide-understanding-and-claiming-housing-land-and-property-restitution>

## PRINCIPLE 14: Adequate consultation and participation in decision-making

- 14.1 States and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution programmes are carried out with adequate consultation and participation with the affected persons, groups and communities.
- 14.2 States and other involved international and national actors should, in particular, ensure that women, Indigenous Peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including the elderly, single female heads of households, separated and unaccompanied children, and the disabled should be given particular attention.

### Key issues

Principle 14 upholds the standard of rights holders' participation and consultation in all steps of restitution processes. Under this Principle, marginalized groups and persons in vulnerable situations who should be included in relevant decision-making processes and empowered to make their participation effective and meaningful are identified. Article 25 of the International Covenant on Civil and Political Rights stipulates the right to participation in public affairs and the right to consultation and representation in decision-making has been articulated by the Committee on Economic, Social and Cultural Rights, in its general comment No. 7 (1997) observed that communities affected by forced evictions should have a right to "an opportunity for genuine consultation".

The United Nations Development Group recognizes that "[e]very person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realised."<sup>184</sup> Similarly, Principle 28(2) of the Guiding Principles on Internal Displacement states that "[s]pecial efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration."<sup>185</sup> The United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement treat this as an essential measure of constant obligation, especially to prevent eviction and displacement, as well as at the remedy stage.<sup>186</sup> The Special

Rapporteur on the Human Rights of IDPs has called upon all stakeholders to "ensure that consultation, information and participation of internally displaced persons is central to the design, approval, and implementation of decisions affecting their housing, land and property rights".<sup>187</sup>

Local stakeholders should be allowed to work collectively with development agencies to design, plan, implement, monitor and evaluate processes. In development practices, participation in consultation and decision-making can guarantee project efficiency and sustainability, mitigate public opposition, prevent marginalization and further deprivation. Participatory housing, land and property restitution processes ensure that the approaches are inclusive, culturally suitable and adequately address the needs of the affected people. Accordingly, practitioners must consider the political atmosphere and introduce participatory methods even if the atmosphere would not be initially positive toward participatory planning, consultations and interviews.

Women often are excluded from participation in male-dominated decision-making forums, or do not want to participate for fear of gender-based violence or because of the traditionally restricted decision-making role of women in communities. Nonetheless, practitioners should support women and girls to contribute to risk reduction and recovery policies, plans and programmes by providing specific knowledge, perspectives, experiences and solutions. Authorities, humanitarian actors and development agencies can partner with women's networks and grass-roots organizations to support the position of

<sup>184</sup> United Nations Development Group, *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding among UN agencies*(2003), HRBA portal.

<sup>185</sup> Commission of Human Rights, *Guiding Principles on Internal Displacement*.

<sup>186</sup> See A/HRC/34/51, annex 1, paras. 27, 38, 53, 56(a) and 65.

<sup>187</sup> See A/HRC/47/37, para. 82 (g); and A/72/202, section III.



women's participation in planning, implementation, monitoring and evaluation of housing, land and property restitution processes and programmes.<sup>188</sup>

## Opportunities for applying Principle 14

**Collecting housing, land and property information during refugee and displaced persons' registration and opinion surveys** – Applying Principle 14 can contribute towards ensuring that holders of housing, land and property restitution rights are active participants in this process and that they are fully consulted *and* able to put forth their views on these questions, including the choice of remedies, prior to the completion of the design of restitution and compensation laws, procedures or mechanisms. Importantly, Handbook users need to gauge perspectives on all elements of the restitution process and determine how refugees and displaced persons envisage the restitution process working in practice, while carefully avoiding raising

expectations associated with restitution that cannot be met. Failing to meet expectations might ultimately undermine rather than strengthen acceptance of the process and its outcome. Restitution rights holders should be encouraged to provide concrete ideas concerning the design and implementation of the restitution process. Collecting such views can be done formally through meetings and other exercises, as well as during registration and opinion surveys conducted in settlements and other areas where the displaced are concentrated. It may not be possible, however, to implement each group's views of the restitution process. Consequently, each participant presenting a view should be provided with feedback as to the constraints that may impede the implementation of those views.

**Monitoring gender-responsiveness in restitution, access to land and reconstruction processes** – Practitioners should ensure that women refugees and displaced persons are involved in the design of housing, land and property interventions supporting restitution, compensation or

### Box 19: Securing (displaced) women's land rights in Afghanistan<sup>189</sup>

Inequitable land rights are a major cause of gender inequality in Afghanistan. The results of a UN-Habitat survey of more than one million land parcels between 2013 and 2021 indicate that less than 5 per cent of ownership documents included a woman's name. Instead, women's relationship to land is typically secondary – established through their relationship with a male owner.

In recent years, UN-Habitat has supported securing women's land rights through the promulgation and implementation of gender-sensitive land laws. It supported the Regulation on Managing Affairs of Urban Informal Properties of 2018, which installed a regulatory system for documenting the occupancy rights of women residing in informal settlements through issuing occupancy certificates. The regulation was operationalized by the City for All programme, implemented from 2013 to 2021. UN-Habitat supported the Ministry of Urban Development and Land, with the Afghan Land Authority to survey more than one million land parcels across the country; more than 31,000 occupancy certificates were allocated to residents of informal settlements before the events of 2021 brought the scheme to a halt.

UN-Habitat has also supported the allocation of land rights to displaced women. Presidential Decree 305 (PD 305) of 2018 (later amended to PD 108 in 2020) has provided millions of displaced people the legal right to apply for land parcels allocated by the State and included important legal provisions to secure women's land rights. From 2017 to 2021, UN-Habitat supported the Ministry of Refugees and Repatriation, the Ministry of Urban Development and Land, and (from 2020) the Office of the First Vice President, to operationalize the PD 305/108 through the SHURA programme. A total of 14,119 eligible households were registered and 3,170 families in Kabul and Herat were selected for land allocations in two pilot settlements before the programme was suspended in 2021. In addition, more than 10 million jeribs of state land across all regions of the country were entered into the State Land Bank for future allocation.

The events of August 2021 have resulted in ambiguity over the status of women's land rights and the country's land laws more generally: many associated programmes have been suspended or terminated, in particular, those reliant on funds from international donors.

<sup>188</sup> Norwegian Refugee Council, "Women's housing, land and property Rights", Fact Sheet 6, April 2005. Available at [www.nrc.no/resources/reports/womens-hip-rights/](http://www.nrc.no/resources/reports/womens-hip-rights/)

<sup>189</sup> UN-Habitat, Norwegian Refugee Council and UNHCR, "A brief guide to women's land rights in Afghanistan, 2020". Available at [www.nrc.no/resources/reports/a-brief-guide-to-womens-land-rights-in-afghanistan/](http://www.nrc.no/resources/reports/a-brief-guide-to-womens-land-rights-in-afghanistan/)

access to land and housing in a truly voluntary manner without force or coercion. Women's views on such issues may focus on different aspects of the process than those prioritized by men, and every effort should be made to determine these views and how they can best be facilitated and considered throughout the process.

**Using digital technology to enhance participation** – Access to information is critical to individuals and communities to increase participation in decision-making. Research and practice have demonstrated that digital technology

enables citizens, including young people and women, to become informed, shape opinions and get organized, countering challenges they face in accessing public space and decision-making. Information and communication technologies can also be used to facilitate the participation of people in documenting patterns of human rights violations and claims, notably on housing, land and property. Information and communications technologies were used to that effect in the Colombian transitional justice process.<sup>190</sup> For more information, see the box 21 under Principle 15.

### **Box 20: Advancing women and youth participation in reconstruction efforts in Gaza (Occupied Palestinian Territory)<sup>191</sup>**

For the reconstruction of Gaza after 2014, Belgium financially supported UN-Habitat and United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) to launch an innovative programme to advance women's and young people's rights to participate in reconstruction and recovery efforts through digital tools and techniques. Implemented in cooperation with the Palestinian Housing Council and several local NGOs, the "Utilizing Digital Tools to Promote Human Rights and Create Inclusive Public Spaces in the Gaza Strip" project has supported the design and implementation of three inclusive, safe and accessible public spaces by using digital technologies. The joint programme aimed to strengthen the relationship between local authorities and communities, increase civic engagement of all citizens and promote good governance. While supporting long-term institution building and the overarching principle of self-determination, the programme has worked in parallel in developing the capacity of local councils and professionals on the use of digital technologies to better inform citizens on planning, available land and development, through the creation of an interactive municipal website. The programme, which ended in January 2019, used digital tools and video games, such as MineCraft and SaftiPin, to engage communities in the design of their public spaces, linking simultaneously with female architects from Gaza trained on the use of digital technologies for the development of gender-inclusive, safe and accessible public spaces free from violence against women.

<sup>190</sup> Jean-Marie Chenou, Lina P. Chaparro-Martínez and Ana María Mora Rubio, "Broadening conceptualizations of transitional justice through using technology: ICTs in the context of *Justicia y Paz* in Colombia", *International Journal of Transitional Justice*, vol. 13, No. 1 (March 2019).

<sup>191</sup> UN-Habitat, "Closing ceremony of the joint programme utilizing digital tools to promote human rights and create inclusive public spaces in the Gaza strip", 17 January 2019. Available at <https://unhabitat.org/closing-ceremony-of-the-joint-programme-utilizing-digital-tools-to-promote-human-rights-and-create-inclusive-public-spaces-in-the-gaza-strip>

## Frequently asked questions

### How can participation best be facilitated?

Refugees and displaced persons should play a vital role in developing programmes and institutions designed to respect, protect and fulfil restitution rights. Local and central government authorities, along with international organizations must understand the importance of incorporating their views into the restitution process and recognize that restitution measures are far more likely to succeed when the rights holders are involved as equal partners in a consultative process. Authorities implementing restitution rights should facilitate the participation of the displaced by, for instance, assisting in the establishment of refugee/displaced person organizations, which can speak on behalf of the affected communities, engaging these groups and inviting them to participate in meetings on restitution issues and

by encouraging the development or use of informal community-based dispute settlement mechanisms. These mechanisms can be a particularly important tool to ensure effective and legitimate adjudication of restitution disputes and to promote greater equity in property relationships at the community level.

As always, practitioners should ensure the involvement of women and young people in the planning, design, implementation and follow-up to any restitution scheme. Local women can act as facilitators of community participation, such as carrying out needs assessments in communities. In some contexts, women have been deeply involved in post-conflict interventions to restore housing, land and property rights, while noting examples from reconstruction efforts in Afghanistan and Iraq. The meaningful inclusion of persons and groups in vulnerable situations is key to ensuring sustainable and durable restitution arrangements.

## Useful guidance

### United Nations and international guidance:

- OHCHR, Guidelines on the effective implementation on the right to participate in public affairs (2018). Available at: [www.ohchr.org/en/documents/tools-and-resources/guidelines-effective-implementation-right-participate-public-affairs](http://www.ohchr.org/en/documents/tools-and-resources/guidelines-effective-implementation-right-participate-public-affairs)

### Other sources:

- Global Initiative for Economic, Social and Cultural Rights, “A Rights-based Approach to Participation,” A GI-ESCR Practitioner’s Guide, May 2014. Available at <https://gi-escr.org/images/documents-2/GI-ESCR-Practitioners-Guide-on-Right-to-Participation.pdf>
- Luisa Dietrich and Simone E. Carter. *Gender and Conflict Analysis in ISIS Affected Communities of Iraq* (Oxford, United Kingdom, Oxfam, May 2017).

## PRINCIPLE 15: Housing, land and property records and documentation

- 15.1 States should establish or re-establish national multipurpose cadastral or other appropriate systems for the registration of housing, land and property rights as an integral component of any restitution programme, respecting the rights of refugees and displaced persons when doing so.
- 
- 15.2 States should ensure that any judicial, quasi-judicial, administrative or customary pronouncement regarding the rightful ownership of, or rights to, housing, land and/or property is accompanied by measures to ensure registration or demarcation of that housing, land and/or property as is necessary to ensure legal security of tenure. These determinations shall comply with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.
- 
- 15.3 States should ensure, where appropriate, that registration systems record and/or recognise the rights of possession of traditional and Indigenous communities to collective lands.
- 
- 15.4 States and other responsible authorities or institutions should ensure that existing registration systems are not destroyed in times of conflict or post-conflict. Measures to prevent the destruction of housing, land and property records could include protection in situ or, if necessary, short-term removal to a safe location or custody. If removed, the records should be returned as soon as possible after the end of hostilities. States and other responsible authorities may also consider establishing procedures for copying records (including in digital format) transferring them securely and recognising the authenticity of said copies.
- 
- 15.5 States and other responsible authorities or institutions should provide, at the request of a claimant or his or her proxy, copies of any documentary evidence in their possession required to make and/or support a restitution claim. Such documentary evidence should be provided free of charge, or for a minimal fee.
- 
- 15.6 States and other responsible authorities or institutions conducting the registration of refugees or displaced persons should endeavour to collect information relevant to facilitating the restitution process, for example by including in the registration form questions regarding the location and status of the individual refugee's or displaced person's former home, land, property or place of habitual residence. Such information should be sought whenever information is gathered from refugees and displaced persons, including at the time of flight.
- 
- 15.7 States may, in situations of mass displacement where little documentary evidence exists as to ownership or rights of possession, adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution. In such cases, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.
- 
- 15.8 States shall not recognise as valid any housing, land and/or property transaction, including any transfer that was made under duress, or which was otherwise coerced or forced, either directly or indirectly, or which was carried out contrary to international human rights standards.

## Key issues

Principle 15 addresses the question of formalizing housing, land and property rights through the registration of relevant records and decisions, and related documentation linked to restitution processes. It is intended to facilitate, from a logistical point of view, restitution processes through the establishment, preservation or reconstruction of property registration systems. Principle 15.1 encourages States to establish “multipurpose” cadastral or other systems for officially registering such rights following pronouncements conferring housing, land and property restitution rights to refugees and displaced persons. Principle 15.2 links the pronouncements of rights to the subsequent registration of those rights to ensure tenure security. In instances in which displacement is widespread, States should encourage the judicial or administrative bodies pronouncing on ownership rights to coordinate with the institution or institutions responsible for the registration of such rights in the tenure system, thus ensuring that efficient information exchanges are possible. Principle 15.3 notes the importance of developing appropriate registration systems to register rights over lands, which are often not contained in official cadastres, such as the land of Indigenous Peoples and rights of possession of collectively held lands.

Conflicts, natural disasters and displacements often lead to damage to or destruction or confiscation of cadastres, property registries and other official records that provide proof of ownership and related rights. In many conflict situations, cadastres and housing, land and property records are consciously destroyed or confiscated by one of the warring parties with the objective to extinguish the rights of members of another group. Consequently, the protection or re-establishment of housing, land and property records after conflicts have ended can greatly facilitate the restitution process by providing (what should be) an independent source of evidence proving restitution claims. These points form the core of Principle 15.4. In some situations, the creation or maintenance of a land registry or database may be necessary. Where land registries and other forms of registration exist, records should be made publicly available at the local level and subject to inspection without unreasonable costs or administrative barriers. Access to such records is crucial for a restitution process to be transparent and accountable.

Principle 15.7 builds a necessary degree of flexibility into questions surrounding the registration of housing, land and property rights by recognizing that due to the circumstances of flight, refugees and displaced persons frequently no longer possess documentary evidence of their rights to their original homes and lands. For example, in an assessment carried out in the north-western area of the Syrian Arab Republic, which is not under the control of the Government of the Syrian Arab Republic, 48 per cent of respondents indicated that their property documentation had been lost, destroyed or left behind. The situation has been further complicated by the widespread damage to property registries during the conflict.<sup>192</sup>

Related to this is the challenge that some refugees and displaced persons may have never possessed **formal** documentation to demonstrate their housing, land and property rights. In some countries in the Middle East and North Africa region, historically, there has been high levels of informal tenure. For instance, according to World Bank data, approximately one third of the urban population of the Syrian Arab Republic, 3.4 million people, lived in informal settlements prior to the conflict and 40 per cent of the population of Damascus lived in informal settlements.<sup>193</sup> Pre-war estimates by the Ministry of Local Administration suggest that only approximately 50 per cent of the land in the Syrian Arab Republic was officially registered, and for another 40 per cent, the boundaries are demarcated but without formal registration.<sup>194</sup> While land cadasters have existed in all 14 governorates of the Syrian Arab Republic prior to the war, they only covered housing, land and property transactions within the statutory system and registries were paper-based. The central cadaster system, which was set up in 2010 to digitalize land records, only records new transactions.<sup>195</sup> Despite living in informal settlements, most residents had some documentation proving ownership or possession even if this is not reflected in the land registries. This could include a private sale contract, a notary act or a court order documenting a transaction. In these contexts, restitution processes need to adopt appropriate alternative evidentiary requirements. In the past, restitution programmes have applied lower standards of proof, acknowledging the inherent challenges. Given the difficulties in collecting and presenting evidence for these purposes, Handbook users may consider developing projects and building capacities to assist restitution claimants in assembling such documents.

<sup>192</sup> Norwegian Refugee Council and UNHCR, “Displacement, housing, land and property and access to civil documentation in the north-west of the Syrian Arab Republic”, July 2017. Available at [www.ecoi.net/en/file/local/1405606/1930\\_1503398808\\_final-nrc-displacement-hlp-and-civil-doc-syria-23-07-2017-en.pdf](http://www.ecoi.net/en/file/local/1405606/1930_1503398808_final-nrc-displacement-hlp-and-civil-doc-syria-23-07-2017-en.pdf)

<sup>193</sup> Martin Clutterbuck, “Property Restitution in Post-Conflict Syria”, *Forced Migration Review*, No. 57 (2018).

<sup>194</sup> Paul Prettitore, “Will forcibly displaced Syrians get their property back?”, Brookings commentary, 21 July 2016. Available at [www.brookings.edu/articles/will-forcibly-displaced-syrians-get-their-land-back/](http://www.brookings.edu/articles/will-forcibly-displaced-syrians-get-their-land-back/)

<sup>195</sup> Laura Cunial, Kirstie Farmer and Rachel Sider, “Preparing the ground for property restitution in the Syrian Arab Republic”, World Bank paper for the Conference on Land Governance in an Interconnected World, March 2018. Available at [www.oicrf.org/-/preparing-the-ground-for-property-restitution-in-the-syrian-arab-republic](http://www.oicrf.org/-/preparing-the-ground-for-property-restitution-in-the-syrian-arab-republic)

Even when documentation is available, it may not accurately reflect the de facto ownership situation. For instance, 70 per cent of holders of documents interviewed for a survey in 2015 and 2016 stated that their document was in another person's name. This reflects the practice of transferring ownership or passing down housing, land and property through family lines without officially registering the change in ownership at the relevant authority. It may also be due to the practice of building multi-family structures on land held in a single person's name.<sup>196</sup> Finally, housing, land and property may be registered in the name of the male heads of household. Land registry personnel and legal aid providers in the Syrian Arab Republic have confirmed that that it is not common for women to register property under their names, especially in rural areas where the main way to attain property is through inheritance.

They estimate that only 15 per cent of women own or share a house or real estate in their name.<sup>197</sup> This makes it difficult for them to claim their rights in case their husband or male relative has passed away or has gone missing during a disaster or conflict. In this context, it is important to recall Principle 4.2 in which it is stated

that “housing, land and property restitution programmes, policies and practices recognize the joint ownership rights of both male and female heads of the household as an explicit component of the restitution process” and the role of those involved in these processes to ensure gender equality in these matters.

Finally, in applying Principle 15, users of the Handbook need to be cognizant of the many different views on the question of registering housing, land and property rights, and why great care must be exercised in pursuing these questions. For instance, the process of constructing or reconstructing official records can be abused by corrupt officials and can equally be used as a motivation to economically or politically strong groups to illegally grab land belonging to refugees and displaced persons and registering it as their own. In such cases, users of the Handbook should support efforts to improve housing, land and property registration systems as a preventative tool against housing, land and property rights violations, such as illegal confiscation of land and establish or re-establish cadastral and housing, land and property registration systems as a means of first and foremost protecting the rights of vulnerable segments of society.

### Examples of evidence that could be admissible in restitution programmes:

- Title deed (*tapu*)
- Sale contracts
- Gift contracts
- Mortgage/credit contracts
- Rental/lease contracts
- Sharecropper agreement
- Rental payment slips
- Inheritance decisions with legal validity
- Court order
- Notary Act
- Decisions made in administrative procedures
- Building/construction permit
- Property/income tax documents
- Personal contracts
- Construction bills
- Utility bills (such water, electricity, gas, phone)
- Voting records
- Census records
- Car registration documents
- Power of Attorney document
- Photographs
- Personal identification document(s)
- Eyewitness testimony
- School reports and registration records
- Phonebooks
- Property value records
- *Sannad Borrani*
- Official correspondence indicating address of housing, land and property

<sup>196</sup> Norwegian Refugee Council, “Reflections on future challenges to housing, land and property restitution for Syrian refugees”, Briefing note, January 2017. Available at [www.nrc.no/resources/briefing-notes/reflections-on-future-challenges-to-housing-land-and-property-restitution-for-syrian-refugees/](http://www.nrc.no/resources/briefing-notes/reflections-on-future-challenges-to-housing-land-and-property-restitution-for-syrian-refugees/)

<sup>197</sup> Mhd Ekba Anak, “Researching internal displacement, housing, land and property rights for Syrian women in contexts of internal displacement: challenges and opportunities”, Research Internal Displacement, 25 November 2021, p. 5. Available at [https://researchinginternaldisplacement.org/short\\_pieces/housing-land-and-property-rights-for-syrian-women-in-contexts-of-internal-displacement-challenges-and-opportunities/](https://researchinginternaldisplacement.org/short_pieces/housing-land-and-property-rights-for-syrian-women-in-contexts-of-internal-displacement-challenges-and-opportunities/)

## Opportunities for applying Principle 15

**At the time of flight** – The loss and/or destruction of housing, land and property records and documentation, especially in countries where housing, land and property rights are generally and routinely registered, significantly complicates restitution processes because it removes a crucial independent source of information to verify restitution claims. To help reduce the impact of such losses and to build documentary evidence for use in the event of return and restitution, users of this Handbook can attempt to collect whatever information and evidence of refugee and displaced person housing, land and property rights may be available, at the time of flight or during subsequent registration/verification rounds. This should focus on the housing, land and property situation of refugees and displaced persons at the time they fled their homes, including, among other types of information, address, length of residency, estimated value, tenure status, ownership records and any other relevant personal information related to residency, ownership, possession or use and loss of property rights. Asking the right questions and storing this information during refugee and IDP registration procedures can make a big difference when voluntary repatriation occurs, as this information, in turn, can be provided to restitution institutions following the end of the conflict generating the displacement.

During the registration of refugees at the time of flight, the institution or organization conducting the registration should anticipate that the future institution charged with facilitating restitution also might use the information it captures. The type and format of the information to be captured are some of the issues that the designers of such a registration system should consider. Conversely, the restitution institution must conduct an audit of all possible data sources that might facilitate the restitution process, including information captured at the time of flight. Once identified, the restitution institution must determine the accuracy, completeness and usability of the information contained in the identified data sources. After such an audit, the information contained in the data sources may prove to be one of the sources for the restitution institution to independently establish the facts related to undocumented restitution claims.

**Prior to the submission of restitution claims** – Handbook users can assist people in making restitution claims in accessing the official information concerning their claim may be available within existing property cadastres or other residential registration systems. If official documentation is not available (such as housing, land and property rights were never formally registered and records concerned have been destroyed, are missing or have been tampered with) restitution claimants can be assisted in collecting documentation and building strong restitution claims.

### Box 21: Innovative and practical tools to document housing, land and property rights during or after displacement

Various innovative and practical tools have been developed in recent years to respond to the challenges pertaining to housing, land and property rights documentation, including in the context of conflict, disaster and displacement. For instance, in Honduras, authorities have developed a **dedicated interim registration system** that enables refugees and IDPs to record the – often unregistered – housing, land and property they were forced to abandon. The objective of this approach is to avoid the loss of local knowledge on housing, land and property ownership and occupation in the short-term and prepare for restitution procedures in the long-term. Developing the capacity of relevant institutions and the drafting of a dedicated law are subsequent phases of the approach (see also box 20).<sup>198</sup>

Another example is a **special mobile application** to preserve evidence while conflict and displacement are still ongoing. Refugees and displaced persons can document their housing, land and property claims by uploading information onto the application. The application facilitates a participatory archiving process, which enables displaced persons to play an active role in their restitution claims. The application may provide information on the type of alternative evidence that can be used to document their housing, land and property claim and other relevant issues.<sup>199</sup>

Land tools used in development to help countries improve land information systems have been adapted to post-disaster and post-conflict situations to document housing, land and property rights. For instance, the

<sup>198</sup> GP20, “Working together better to prevent, address and find durable solutions to internal displacement: compilation of national practices”, 2009. Available at <https://migrationnetwork.un.org/resources/working-together-better-prevent-address-and-find-durable-solutions-internal-displacement>

<sup>199</sup> See A/HRC/47/37.

**Social Tenure Domain Model (STDM)**, a gender-responsive participatory land information and management tool for recording formal and informal tenure rights, was developed by UN-Habitat and adapted to rural and urban settings. The Model was used to map the housing, land and property rights of Yazidi returnees who had been displaced in other parts of Iraq (see box 22). The Model was also used to respond to the displacement situation of people from Marawi city in the Philippines. The project took a participatory approach to create a digital map of the housing, land and property rights of IDPs, which was used to guide reconstruction under the “Rebuilding Marawi” project.<sup>200</sup>

The related **Community-mapping** based on pre-conflict or pre-disaster satellite images is used to link people to spaces to facilitate the identification of pre-existing buildings in cases of heavy destruction. Individual declarations of tenure can be complemented by supporting documents and pictures uploaded through the STDM software. Returnees and displaced persons can contribute to the mapping exercise with individual declarations of tenure validated by neighbours and community leaders. The tool is also used by UN-Habitat and its partners to register housing, land and property claims of Syrian refugees living in Iraq and Lebanon (see box 22).

**Following the issuing of decisions on restitution claims** – A key outcome of any fair and equitable restitution process in which the housing, land and property rights of refugees and displaced persons are confirmed involves the recognition of these rights through official, but *appropriate*, forms of registration and the provision of formal titles or other records assuring adequate levels of security of tenure, notwithstanding the type of housing, land and property rights concerned. Handbook users need to monitor the precise way such rights are formalized and seek to ensure that such registration does not result in protracted housing, land and property disputes. It is also important to ensure that registration systems that provide legal recognition to customary or informal rights following successful restitution

claims do not necessarily attempt to assimilate these rights into formal State law without considering the positive and negative implications this could have. It is often useful to introduce incremental processes that protect unregistered tenure rights by undertaking preliminary “extra-legal” registration of land and housing, which can then gradually feed into official records. Handbook users should note that the registration of property rights is just one element of a much broader restitution process. Full reparation is a further objective. Formal registration of tenure is neither a panacea for the many complex challenges that refugees and displaced persons face with restitution claims, nor necessarily a value-free or non-ideological process that benefits all groups equally.

## Box 22: Registering informal land rights in Iraq

The Yazidi community in Iraq had been unable to register their land rights and obtain formal documentation that confirms their rights due to long-standing discriminatory policies. Following the displacement of at least 250,000 Yazidis resulting from the Islamic State in Iraq and the Levant occupation of the district of Sinjar starting in 2014, UN-Habitat conducted research to examine the obstacles for the return of the community. One key challenge concerns the informality of the rights over the housing, land and property that the Yazidi were forced to abandon. To support large-scale return in the prevailing context, UN-Habitat advocated an incremental approach to resolve the housing, land and property-related challenges. Through the use of STDM and a series of community meetings, UN-Habitat mapped and verified occupancy claims by Yazidi returnees. It subsequently issued occupancy certificates that state a family’s location, names and other key data. The occupancy certificates were signed by local authorities, community representatives, UN-Habitat and the returnee. By March 2021, more than 7,500 occupancy certificates had been issued.<sup>201</sup>

In December 2022, the Council of Ministers approved the Legal Decree, which was jointly drafted by UN-Habitat and the Prime Minister’s Office. The approved legal decree recognizes and grants land ownership and property rights for the Yazidis and will formalize their land rights by turning the occupancy certificates issued by UN-Habitat into full land ownership titles.<sup>202</sup>

<sup>200</sup> Global Land Tool Network, “The Philippines: building government’s capacity in participatory community mapping through STDM in post-war Marawi permanent resettlements”, 2021. Available at <https://gln.net/2021/07/19/the-philippines-building-governments-capacity-in-participatory-community-mapping-through-stdm-in-post-war-marawi-permanent-resettlements/>

<sup>201</sup> United Nations in Iraq, “Leave no one behind: land tenure in post-conflict Iraq”, March 2021. Available at <https://iraq.un.org/en/122187-leave-no-one-behind-land-tenure-post-conflict-iraq>

<sup>202</sup> UN-Habitat, “Iraq country Office”, issue 24, December 2022. Available at [https://unhabitat.org/sites/default/files/2023/01/december\\_2022\\_newsletter\\_english.pdf](https://unhabitat.org/sites/default/files/2023/01/december_2022_newsletter_english.pdf)



### Box 23: The Tunisian regularization of informal settlements

Tunisian authorities started to implement regulatory policies for low-income urban areas in the late 1970s. Urban development projects initiated in 1978-79 aimed at integrating informal and squatter areas into the surrounding urban fabric, regularizing housing, land and property rights tenure, and upgrading local infrastructure. By 2003, approximately 25 per cent of urban dwellers in approximately 700 neighbourhoods had been reached by these rehabilitation programmes, and the number of beneficiaries was estimated at 1.5 million.

The housing, land and property rights remedy mechanism is embodied in an institutional structure. While the approach taken by Tunisia to housing, land, and property rights involves a complex network of tribunals and administrative bodies, each plays a specific role in managing, regulating and adjudicating the country's housing, land and property. Tribunals are specialized judicial bodies that deal exclusively with housing, land and property rights disputes. They handle cases involving housing, land and property rights and rights in rem – formal or informal, customary or codified – such as tenancy disagreements, land use conflicts and other real estate-related legal issues. Their role is to interpret and enforce the laws pertaining to housing, land and property ownership, ensuring fair and lawful resolutions to disputes.<sup>203</sup> Furthermore, Tunisia established the Housing, Land & Property Agency (Agence Foncière d'Habitation) in 1973 to claim land for the public good and the pre-emptive right to purchase land.

The Housing, Land & Property Agency was created to supply land for the construction of affordable social housing to enter into land markets – to control prices – and to assist municipalities in land management. In 1981, Tunisia established the National Agency for Urban Renovation (L'agence de Réhabilitation et de Rénovation Urbaine) to execute and synchronize upgrading activities throughout the country. This marked a major shift in the approach adopted in policy handling of urban upgrading undertakings. Over the 1982–2009 period, more than 36 slum and informal neighbourhoods were upgraded in larger cities throughout Tunisia.<sup>204</sup>

## Frequently asked questions

### Can possession of housing, land and property documentation ever be a disadvantage?

In the case of conflict in which multiple armed forces fight for territory and/or compete for legitimacy, each may set up its own documentation regime with its own stamp of approval. This is true for a variety of vital events, including birth, death, marriage and divorce. Any of these civil documents could have consequences for housing, land and property restitution claims at the end of hostilities. However, during hostilities and in cases where the prevailing power seeks revenge and reprisals, the refugee or displaced person possessing such alternate documentation may face non-recognition, confiscation of the document or worse. For example, over the course of the conflict in the Syrian Arab Republic, civil documentation has been issued by different actors in addition to the

government in Damascus, including the Islamic State in Iraq and the Levant, Jabhat al-Nusra and the Autonomous Administration of North and East Syria. Different parties have reportedly confiscated and/or destroyed tens of thousands of civil documents of refugees and displaced persons and issued new civil or property documentation not recognized by the government in Damascus.<sup>205</sup>

### Are there dangers in registering formerly unregistered lands?

Yes, and these can be considerable. Attempts to register unregistered lands can cause serious problems if the adjudication process is not well designed or overly rushed. In many agrarian societies, the most difficult restitution disputes often centre on common property resources, which have never been subject to formal registration, but are used in accordance with customary or traditional arrangements. Common property and collective tenure can be nullified if

<sup>203</sup> Tunisia, Ministry of Justice, "Real estate court". Available at [www.justice.gov.tn/index.php?id=257&L=3](http://www.justice.gov.tn/index.php?id=257&L=3) and Tunisia, Ministry of State Property and Land Affairs (n.d.). Available at [www.domainetat.tn/?page\\_id=2585&lang=fr](http://www.domainetat.tn/?page_id=2585&lang=fr)

<sup>204</sup> See for example, UN-Habitat, *Tunisia: Housing Profile* (Nairobi, 2011), p. 18; and Youssef Diab, Baher El-Shaawary and Salma Yousery, *Informal Settlements in the Arab Region – "Towards Arab Cities without Informal Areas"* (Nairobi, February 2020), pp. 64–69 with the Greater Tunis. Ettadahmen Case study and further references.

<sup>205</sup> Norwegian Refugee Council, "Reflections on future challenges to Housing, Land and Property restitution for Syrian refugees"; and Norwegian Refugee Council and UNHCR, "Displacement, housing land and property and access to civil documentation in the south of the Syrian Arab Republic" (June 2017). Available at [www.ecoi.net/en/file/local/1405606/1930\\_1503398808\\_final-nrc-displacement-hlp-and-civil-docs-syria-23-07-2017-en.pdf](http://www.ecoi.net/en/file/local/1405606/1930_1503398808_final-nrc-displacement-hlp-and-civil-docs-syria-23-07-2017-en.pdf)

a mix of individual rights and small or larger social units end up dividing and restricting access to grazing or forest land, rangelands, pasture, land reserves for agricultural use, communally owned land (*musha`a*), or lineage estate property that is held by descent groups or tribal segments. Innovative legal constructs are often necessary to allow the registration of collective ownership and to define overlapping rights in common, such as distinguishing group or individual ownership rights, as opposed to rights of long-term or periodic access to such land.

People who make a living by accessing and using common land sometimes on a seasonal basis, such as Indigenous Peoples, pastoralists, people with a special attachment to land and women, may suffer more than others from

individual registration of rights as individual registration tends to overlook these secondary rights to land. However, some countries have adopted laws protecting the access rights of pastoralists.<sup>206</sup> Communities should not be encouraged to begin registering individual titles until the common property of the community has been demarcated in a mutually agreeable fashion. At the same time, while great care is needed in a land registration process, without an effective land administration system, including a centralized registry appropriate for local conditions and widely supported by the population concerned, providing titles will not succeed. If registries are neither properly managed nor updated by those who acquire rights, whether by market transactions, inheritance or through other means, individual and collective claims erode.

## Useful guidance

### United Nations and international guidance:

- Mike McDermott and Peter Wyatt, *Valuation of unregistered land – A practice manual* (Nairobi, UN-Habitat, June 2021).
- Global Land Tool Network, “Social Tenure Domain Model” (n.d.). Available at <https://stdm.gltm.net/>
- Barbara McCallin, “Land and conflict”, Thematic Guidance Note 2: integrating customary tenure into formal systems, 2018. Available at <https://documents1.worldbank.org/curated/en/587161533140402275/pdf/129135-WP-Integrating-Customary-Tenure-into-Formal-Systems.pdf>
- NRC and UNHCR, “Displacement, housing land and property and access to civil documentation in the south of the Syrian Arab Republic” (July 2017). Available at [www.ecoi.net/en/file/local/1405606/1930\\_1503398808\\_final-nrc-displacement-hlp-and-civil-doc-s-syria-23-07-2017-en.pdf](http://www.ecoi.net/en/file/local/1405606/1930_1503398808_final-nrc-displacement-hlp-and-civil-doc-s-syria-23-07-2017-en.pdf)

### Other sources:

- Geoffrey Payne, Alain Durand-Lasserve and Carole Rakodi, “The limits of land titling and home ownership”, *Environment & Urbanization*, vol. 21, No. 2 (2009).
- NRC, “Reflections on future challenges to housing, land and property restitution for Syrian refugees”, January 2017. Available at [www.nrc.no/globalassets/pdf/briefing-notes/icla/final-hlp-syrian-refugees-briefing-note-21-12-2016.pdf](http://www.nrc.no/globalassets/pdf/briefing-notes/icla/final-hlp-syrian-refugees-briefing-note-21-12-2016.pdf)
- NRC and International Human Rights Clinic, “Registering rights: Syrian refugees and the documentation of births, marriages, and deaths in Jordan”, October 2015. Available at <http://hrp.law.harvard.edu/wp-content/uploads/2015/11/Registering-rights-report-NRC-IHRC-October20151.pdf>

<sup>206</sup> Barbara McCallin, “Protecting and strengthening the land tenure of vulnerable groups”, Guidance No. 3: Land and Conflict (2018). Available at <https://documents1.worldbank.org/curated/en/907481533140738062/pdf/129136-WP-Protecting-and-Strengthening-the-Land-Tenure-of-Vulnerable-Groups.pdf>

## PRINCIPLE 16: The rights of tenants and other non-owners

- 16.1 States should ensure that the rights of tenants, social-occupancy rights holders and other legitimate occupants or users of housing, land and property are recognised within restitution programmes. To the maximum extent possible, States should ensure that such persons are able to return to and repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights.

### Key issues

Protecting the rights of tenants and other non-owners is often overlooked in restitution programmes. However, in some countries, only a minority of refugees and displaced persons hold formal ownership rights prior to their displacement. Under all legal systems, tenants and other non-owners possess varying degrees of housing, land and property rights, such as tenancy rights, condominium rights, co-operative rights, rights of adverse possession (including with security of tenure), customary rights and other forms. The State bears the obligation to protect them from forced eviction and displacement and assure them a degree of security over their original homes and places of habitual residence. Failing to rectify unjust and arbitrary applications of law in countries of return, particularly when these are used against tenants and non-owners, can be a contributing factor in preventing successful measures of restitution, and future instability and conflict.

### Opportunities for applying Principle 16

**During the initial stages of the restitution process** – During discussions leading to the development of restitution plans and processes, Handbook users should

seek to ensure that the restitution laws, procedures and institutions that may emerge do not intentionally or by default discriminate against or otherwise treat non-owners inequitably vis-à-vis owners. As noted in Principle 16, three distinct groups, namely tenants, social-occupancy rights holders and other legitimate occupants, should be ensured explicit rights under restitution programmes. Practitioners should make efforts to ensure that these perspectives are included in national restitution processes, along with return and voluntary repatriation plans and durable solutions strategies.

**Providing protection for groups living in vulnerable situations** – United Nations and other organizations entrusted with assisting groups of persons living in particularly vulnerable situations could consider developing their capacity to include landless families as a distinct group in need of protection. Doing so would focus necessary attention to the plight of such groups and hopefully result in the development of tangible plans to give them access to affordable land and/or housing upon return.

### Frequently asked questions

#### Are there any examples of past restitution programmes that have afforded equality of treatment to non-owners?

Yes. The Commission for the Resolution of Real Property Disputes in Iraq and the South African Land Reform Program for Restitution of Land Rights are examples of national restitution programmes that also recognize and address the losses of rights other than ownership. When determining the parties' rights to property, the mandate of the Iraqi Commission included the consideration of

certain rights of possession and rights of use as known in the Iraqi Civil Law. The South African programme included the restitution of labour tenant and sharecropper rights and customary law interests, such as the right to extract water and minerals from the land, to plough, to graze and to gather wood.

#### Do people living in informal settlement or without tenure security have restitution rights?

In principle, yes, but this depends on the circumstances of their forced displacement and the rights they may have accrued in their countries or places of origin. If a person or

community is forcibly displaced and this is deemed either unlawful or arbitrary, their insecure tenure status (which may, in fact, provide for far greater human rights protection than is commonly thought through rights of adverse possession and other accrued rights) should not prevent them from enjoying housing, land and property restitution rights. Restitution programmes have often not adequately benefited refugees and displaced persons who were landless

or homeless at the time of displacement. Principle 16 provides a basis for ensuring that the rights of persons or groups in vulnerable situations are also considered during restitution processes. Various initiatives have supported restitution, security of tenure or regularization of informal tenure by use of incremental housing approaches, neighbourhood upgrades, social housing and participatory community mapping methods.<sup>207</sup>

### Box 24: The New Urban Agenda<sup>208</sup>

The United Conference on Housing and Sustainable Urban Development (Habitat III) was held in Quito in October 2016. Its outcome document, the **New Urban Agenda**, was adopted on 23 December 2016 by the General Assembly. In the document, the urbanization objectives for the next 20 years are set out. The New Urban Agenda provides guidance and standards for the planning, construction, development, management and improvement of urban areas. It connects to the Sustainable Development Goals, particularly Goal 11, and the goal of leaving no one behind and part of the vision expressed in the New Urban Agenda in paragraph 12, “to achieve cities and human settlements where all persons are able to enjoy equal rights and opportunities, as well as their fundamental freedoms guided by the purposes and principles of the Charter of the United Nations including full respect for international law...”

While not addressing restitution of housing, land and property for refugees and displaced persons as such, many parts of the New Urban Agenda apply to their rights and situations as inhabitants of cities, including in paragraphs 19, 20 and 28 and with the application of human rights on which the New Urban Agenda is grounded (article 12). States commit “to ensuring full respect for the human rights of refugees, internally displaced persons and migrants, regardless of their migration status” and “addressing multiple forms of discrimination” towards refugees and internally displaced persons. The approach of the Agenda to informality provides a paradigm shift aimed at embracing and engaging with informality by prioritizing community participation, upgrade and retrofitting of settlements, incremental housing and self-build schemes, rather than demolition. Practitioners can advocate policies embracing the New Urban approach, as they are likely to reduce forced evictions and support restitution of housing, land and property rights held in informal settlements.

## Useful guidance

### United Nations and international guidance:

- FAO, *Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security – Revised Version* (Rome, 2022).

### Other sources:

- Barbara McCallin and Isabelle Schere, *Urban Informal Settlers Displaced by Disasters: Challenges To Housing Responses* (Geneva, Internal Displacement Monitoring Center, Norwegian Refugee Council, June 2015).
- GP20, “Working together better to prevent, address and find durable solutions to internal displacement. G20 Compilation of national practices”, 13 November 2020. Available at <https://migrationnetwork.un.org/resources/working-together-better-prevent-address-and-find-durable-solutions-internal-displacement>

<sup>207</sup> Huma Gupta, *Home Sweet Home: Housing Practices and Tools That Support Durable Solutions for Urban IDPs* (Geneva, Norwegian Refugee Council, March 2015). See examples on Colombia, Kosovo, Georgia and Somalia.

<sup>208</sup> Michael West Mehaffy and Tigran Haas, “Informality in the New Urban Agenda: A ‘new paradigm’”, *Berkeley Planning Journal*, vol. 30, No. 6 (2018).

## PRINCIPLE 17: Secondary occupants

- 17.1 States should ensure that secondary occupants are protected against arbitrary or unlawful forced eviction. States shall ensure, in cases where evictions of such occupants are deemed justifiable and unavoidable for the purposes of housing, land and property restitution, that evictions are carried out in a manner which is compatible with international human rights law and standards, such that secondary occupants are afforded safeguards of due process, including an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress.
- 17.2 States should ensure that the safeguards of due process extended to secondary occupants do not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the housing, land and property in question in a just and timely manner.
- 17.3 In cases where evictions of secondary occupants are justifiable and unavoidable, States should take positive measures to protect those who do not have the means to access any other adequate housing other than that which they are currently occupying from homelessness and other violations of their right to adequate housing. States should undertake to identify and provide alternative housing and/or land for such occupants, including on a temporary basis, as a means of facilitating the timely restitution of refugee and displaced persons' housing, land and property. Lack of such alternatives, however, should not unnecessarily delay the implementation and enforcement of decisions by relevant bodies regarding housing, land and property restitution.
- 17.4 In cases where housing, land and property has been sold by secondary occupants to third parties acting in good faith, States may consider establishing mechanisms to provide compensation to injured third parties. The egregiousness of the underlying displacement, however, may arguably give rise to constructive notice of the illegality of purchasing abandoned property, pre-empting the formation of bona fide property interests in such cases.

### Key issues

Secondary occupants are persons who take up residence in a home or on land after the legitimate owners or users have fled due to, among other factors, forced displacement, forced eviction, violence or threat of violence and natural or human-made disasters. The Principles address this phenomenon with the understanding that secondary occupation of the housing, land and property that refugees and displaced persons were forced to abandon often presents itself as an impediment to return.

The unauthorized possession of forcibly abandoned housing, land and property is common in all post-conflict situations and has hampered return efforts in, among other areas, Bosnia and Herzegovina, Burundi, Croatia, Georgia, Kosovo, Rwanda and Iraq. For instance, according to IOM needs assessments reports, 28 per cent of the persons who have been internally displaced in Iraq since March 2003 report that their housing, land and

property is currently occupied by someone else without their permission and more than 40 per cent do not know the status of their property. The situation for refugees may be very similar.<sup>209</sup> By 2015, IOM found that secondary occupation in Islamic State in Iraq and the Levant-held territory in Iraq affects 89 per cent of IDPs whose houses had been confiscated. Respondents from Salah al Din governorate claimed that 64 per cent of private property was occupied by others. Generally, secondary occupation was attributed to either armed groups (45 per cent) or other IDPs/returnees (55 per cent). In contrast, however, secondary occupation of private property was assessed as virtually non-existent in Ninewa and Diyala.<sup>210</sup>

Certain manifestations of secondary occupation must be reversed, particularly if the occupation in question occurs during an ethnic conflict as an element of “ethnic cleansing”. Secondary occupation may also be the result of opportunism, discrimination, fraud or corruption.

<sup>209</sup> Deborah Isser and Peter Van der Auweraert, “Land, property, and the challenge of return for Iraq’s Displaced”, United States Institute for Peace, 9 April 2009. Available at [www.usip.org/publications/2009/04/land-property-and-challenge-return-iraqs-displaced](http://www.usip.org/publications/2009/04/land-property-and-challenge-return-iraqs-displaced)

<sup>210</sup> IOM, “Housing, Land, and Property (HLP) Issues facing Returnees in Retaken Areas of Iraq”, September 2016. Available at <https://arablandinitiative.gln.net/library/publications/housing-land-and-property-hlp-issues-facing-returnees-in-retaken-areas-of-iraq>

Perpetrators of human rights abuses forcibly evict residents and subsequently loot, occupy or sell the abandoned housing, land and property. The latter is another complex type of secondary occupation that involves forced or illegal sales; when the property is sold in the displaced owners' absence without their consent or when displaced persons are forced to sell their property at a price far below the actual market value. In such cases, the titleholder of the property may have been formally changed in the property registry, making the buyer the legal owner. However, often secondary occupants are displaced persons themselves, as they need shelter after leaving behind their own homes in search of safety. Secondary occupation may also be enforced, encouraged, and/or facilitated by the actors that caused the initial displacement, and secondary occupants themselves may have had little or no choice but to relocate to the housing in question.

It is, therefore, important to understand the circumstances in which secondary occupation takes place. While restitution rights need to be enforced, the responsible entities should ensure that vulnerable secondary occupants do not become homeless because of the efforts to protect the housing, land and property restitution rights of refugees and displaced persons. Secondary occupants have a right to adequate housing and must be protected against forced evictions. At the same time, holders of legitimate housing, land and property rights should not be continually prevented from repossessing their homes because of the failure of the State concerned to assist current occupants to find alternative accommodations. In cases in which housing, land and property has been sold by secondary occupants to third parties acting in good faith, States should consider establishing processes to provide compensation to injured third parties or to the claimant if he/she wishes so.

### Box 25: Resolving secondary occupation through mediation in Iraq<sup>211</sup>

In addition to the myriad of housing, land and property-related challenges of pre-2003 Iraq, the country faces a large number of housing, land and property disputes as a result of the waves of violence and displacement that occurred after 2003. Many of these disputes were caused by secondary occupation, which prevents affected refugees and displaced persons from exercising their right to restitution. Affected persons can seek redress through the regular court system. However, many of them prefer to avoid the complicated, bureaucratic and long processes associated with regular courts. They are inclined to approach tribal leaders, who resolve disputes on many issues in a community, including on housing, land and property, on the basis of a set of tribal codes (*sanayin* or *sawani*) and customs. In certain contexts, however, approaching a tribal leader may not be possible. In addition, such local adjudication processes may not be in line with international principles and standards. Women, for instance, may face discriminatory practices that prevent them from effectively exercising their restitution rights. UN-Habitat (in collaboration with Caritas Czech Republic) implemented an initiative in two districts of the Ninewa governorate entitled “Mediation and Peaceful Resolution of Housing, Land and Property Disputes.” The initiative, which started in 2019 and ended in 2020, aimed to help owners, secondary occupants and parties involved in other types of housing, land and property disputes to find an amicable and practical solution to their conflict in line with international principles and human rights. The initiative’s “community mediators” were from diverse ethnic and religious backgrounds and included a significant number of females. In addition to advancing restitution rights, the initiative also facilitated reconciliation and peacebuilding in the region by preventing housing, land and property disputes from escalating and by supporting solutions that avoided clear winner-loser outcomes.

It should be noted that rather than creating parallel structures in (post-) conflict countries, efforts should ideally focus on strengthening existing mechanisms. However, existing national/local capacity may have been significantly weakened by the conflict or disaster or do not (yet) meet required standards. Establishing innovative interim mechanisms may greatly contribute towards protecting restitution rights at a crucial stage in a country’s path towards recovery.

<sup>211</sup> United Nations Iraq, “Property and land dispute cases in Ninewa governorate are being peacefully resolved through mediation”, 27 January 2020. Available at <https://iraq.un.org/en/123265-property-and-land-dispute-cases-ninewa-governorate-are-being-peacefully-solved-through>

## Opportunities for applying Principle 17

**Instituting measures to protect the rights of secondary occupants** – Even in cases in which full restitution rights are clearly relevant for displaced persons and refugees, the eventual removal of secondary occupiers from these homes and lands raises several problems. The legal eviction of secondary occupiers to facilitate return may incite local resistance to these evictions and further deepen ethnic or other social divisions, as was the case in Bosnia and Herzegovina. In all cases, however, secondary occupants must be protected against arbitrary or unlawful forced evictions and must benefit from the procedural protections outlined in the Committee on Economic, Social and Cultural Rights general comment No. 7 (1997). Similarly, secondary occupants have a right to adequate housing under international human rights laws and standards, and States should adopt measures to protect them against homelessness, unreasonable relocation and other violations of their rights. Mechanisms need to be developed to ensure the provision of alternative accommodations to people who are legally required to vacate homes over which they do not hold legitimate rights.

**Finding interim housing, land and property solutions** – The challenges to restitution associated with secondary occupation require a coherent policy response, based on human rights and other legal principles that recognize the pre-eminence of the right to housing, land and property restitution of legitimate rights holders. A thorough examination and analysis of existing and potential policies designed to address secondary occupation should be part of a comprehensive study of restitution for refugees and displaced persons. To ensure that all parties receive fair treatment, institutional strength and political will are crucial factors. For example, secondary occupation has proven to be a contentious issue in Rwanda. National authorities attempted to reduce the conflicts caused by secondary occupation by entrusting

abandoned land to the municipalities that were, in turn, empowered to administer and manage these lands. While secondary occupants were allowed to occupy abandoned lands upon submission of a written request to do so, the original inhabitant maintained the right to immediate restitution should they return home. If an original inhabitant returned to find her or his home occupied by a secondary occupant, the secondary occupant was then given two months to vacate the premises voluntarily. If the secondary occupant was unable to find an alternative accommodation within that time period, the Government was entrusted with finding the secondary occupant another home or provide him or her with building materials.

**Instituting measures to alleviate hardships facing third parties acting in good faith** – Especially in cases in which property restitution mechanisms address situations of long-term displacement, the housing, land and property often may have been sold multiple times; the secondary occupant selling housing, land and property to a third party may have been acting in good faith. For example, the Commission on the Resolution of Real Property Disputes of Iraq assumed jurisdiction over claims for properties that were unlawfully seized or confiscated between the 1968 coup d'état and the fall of the regime of Saddam Hussein in 2003. In the interim, many third parties had paid full market price for properties that later were reclaimed by the owners who were unlawfully deprived of their rights many years ago. In such cases, it may be necessary to provide compensation to such third parties, as a mere eviction would be unreasonable and, arguably, constitute a human rights violation. In the case of Iraq, for example, the statute establishing the Commission on the Resolution of Real Property Disputes mandates that such *bona fide* third parties be compensated the equivalent value of the property at the time the claim is lodged and that the party that sold the property after the unlawful confiscation or seizure shall be liable to pay the compensation.<sup>212</sup> In most cases this party would have been the Iraqi State.

### Box 26: A Delicate Balancing Act in Cyprus<sup>213</sup>

In 2010, the European Court of Human Rights ruling in the *Demopoulos v Turkey* case made legal history when, for the first time, the highest court in Europe recognized that the rights of original owners of property in the northern part of Cyprus must be balanced with the human rights of the current owners. Some political commentators have noted that measures aimed at striking fair balance in favour of equitable solutions to the property issue are central to finding a comprehensive settlement. In a context of protracted displacement, such as in Cyprus, the Court considered that 35 years after displaced people left their property, a “blanket restitution of all the cases of Greek Cypriot dispossessions could give rise to disproportionate new wrongs” if the Court were to “impose an unconditional obligation on a Government to embark on the forcible eviction and rehousing of potentially large numbers of men, women and children even with the aim of vindicating the rights of victims of violations of the [European] Convention [on Human Rights]”.

<sup>212</sup> Article 6 of the Statute of the Commission for the Resolution of Real Property Disputes, Order No. 2, (2006).

<sup>213</sup> European Court of Human Rights, *Demopoulos v. Turkey (decision on admissibility)*, 1 March 2010, paras. 14-15.

## Frequently asked questions

### If evictions are needed to enforce restitution rights, which procedural safeguards must be in place to ensure that human rights laws are complied with?

The Committee on Economic, Social and Cultural Rights in its general comment No. 7 (1997), stated that “forced evictions are *prima facie* incompatible with the requirements of [International Covenant on Economic, Social and Cultural Rights] and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.” When truly *exceptional circumstances* arise such as in the case of enforcing a judicially sanctioned restitution claim, evictions can be justified as long as they are conducted in accordance with the relevant principles of international law.

### Should secondary occupants be guaranteed alternative accommodation?

Principle 17.3 is clear in requiring States to take positive measures to protect secondary occupants that have no other means to access alternative housing, land and property. This is a perspective grounded in human rights law and one that constitutes a fair and sensible approach given the often delicate political and economic realities prevalent in post-conflict environments. Conversely, failure to provide alternative accommodations for secondary occupants should never be used as a rationale for restricting or denying legitimate restitution rights held by refugees and displaced persons wishing to exercise these rights. In instances of actual housing shortages, practitioners, especially those working in the development field, may support efforts by relevant authorities to implement or expand (social) housing programmes or to develop other innovative solutions to address the housing stock deficit. Handbook Users should be cognizant that the requirement of alternative accommodation has been used by government officials in several countries as a tool to delay restitution by alleging that such accommodation was unavailable and that they were unwilling to make secondary occupants homeless.

## Useful guidance

### United Nations and international guidance:

- OHCHR and UN-Habitat, “Forced evictions and human rights”, Fact Sheet No. 25: Rev. 1 (Geneva, 2014).

### Other sources:

- Madeline Garlick and Marcus Cox, “Musical chairs: property repossession and return strategies in Bosnia-Herzegovina”, in *Returning Home: Housing and Property Restitution Rights of Refugees and Internally Displaced Persons*, Vol. 1, Scott Leckie, ed. (New York, Transnational Publishers, 2003).
- Ina Rehema Jahn in collaboration with Peter van der Auweraert and Igor Cvetkovski, “Housing land and property (HLP) issues facing returnees in retaken areas of Iraq”, a preliminary assessment for Land, Property and Reparations Division, Department of Operations and Emergencies, IOM, September 2016. Available at [www.iom.int/sites/g/files/tmzbd1486/files/our\\_work/DOE/LPR/Hijra-Amina-HLP-return-assessment.pdf](http://www.iom.int/sites/g/files/tmzbd1486/files/our_work/DOE/LPR/Hijra-Amina-HLP-return-assessment.pdf)



## PRINCIPLE 18: Legislative measures

- 18.1 States should ensure that the right of refugees and displaced persons to housing, land and property restitution is recognised as an essential component of the rule of law. States should ensure the right to housing, land and property restitution through all necessary legislative means, including through the adoption, amendment, reform, or repeal of relevant laws, regulations and/or practices. States should develop a legal framework for protecting the right to housing, land and property restitution which is clear, consistent and, where necessary, consolidated in a single law.
- 18.2 States should ensure that all relevant laws clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land and property, most notably refugees and displaced persons. Subsidiary claimants should similarly be recognised, including resident family members at the time of displacement, spouses, domestic partners, dependents, legal heirs and others who should be entitled to claim on the same basis as primary claimants.
- 18.3 States should ensure that national legislation related to housing, land and property restitution is internally consistent, as well as compatible with pre-existing relevant agreements, such as peace agreements and voluntary repatriation agreements, so long as these agreements are themselves compatible with international human rights, refugee and humanitarian law and related standards.

### Key Issues

Legislative recognition of the right to housing, land and property restitution for refugees and other displaced persons is crucial to the implementation and enforcement of restitution programmes and policies. Legal protections should be clearly articulated in an internally consistent manner and align with international human rights,

refugee and international humanitarian law. To establish an adequate legal regime for the protection of the rights articulated in these Principles, States need to pursue a range of legislative measures, including the review, adoption, amendment, reform or repeal of relevant laws, regulations and/or practices. There are numerous examples of such legislative efforts by various countries in and outside of the Middle East and North Africa region (see box 27).

### Box 27: Dedicated legislation for the protection of internally displaced persons in Honduras<sup>214</sup>

In Honduras, the Secretariat for Human Rights, through the Directorate for the Protection of Persons Internally Displaced by Violence, has been identifying assets abandoned by IDPs. The new regulatory framework on internal displacement in Honduras, the **Law for the Prevention, Attention and Protection of Internally Displaced Persons**, approved in December 2022 and has been in force since April 2023, recognizes and protects the right of IDPs to legal and material protection, as well as their housing, land and property restitution rights. To this end, it is creating the registry of abandoned assets, which will register the assets that have been abandoned by IDPs and the assets that have been taken from the IDPs and people who have been victims of nefarious acts, such as forced recruitment, extortion, murder, threats, injuries, sexual violence, kidnapping and enforced disappearance. The registry will oversee the Property Institute, in coordination with the Secretariat of Human Rights. The scope of the legal and material protection of the assets of the IDPs, through the registry, includes, among others, the material protection of the assets by the municipalities, in coordination with the National Police, National Defense or other similar mechanisms, the exemption of the payment of the real estate tax by the municipality where the abandoned property is located and, the suspension of the payment of public services of water, sanitation and electric power.

<sup>214</sup> Honduras, Law for the Prevention, Attention and Protection of Internally Displaced Persons (December 2022). Available at <https://faolex.fao.org/docs/pdf/hon217548.pdf>

## Opportunities for applying Principle 18

**Immediately following changes of government and/or during peace processes** – Re-establishing the rule of law in countries devastated by war and destruction is a key element in successful peacebuilding. Providing people with a clear statement of their housing, land and property restitution rights and a practical legal remedy for the violations against them is one of the most concrete steps to building a functioning justice system and a society built on the rule of law. Countries seeking to ensure that restitution rights are protected in a consistent and practical manner are increasingly incorporating explicit housing, land and property restitution rights directly into new legislation. For instance, the Government of Colombia passed Law 387 in 1997, the first comprehensive law that adopts measures for the prevention of forced displacement and addresses the multiple challenges faced by IDPs, including the loss of their productive assets. The Government's efforts continued with, most importantly, the passage of the Victims and Land Restitution Law of 2011, creating the formal framework for restitution of land to IDPs.<sup>215</sup>

The country's 2016 peace agreement confirmed the right to restitution and included detailed provisions to implement this right.<sup>216</sup>

**During periods of legislative review, particularly when United Nations or related transitional administrations are in place** – Increasingly, compilations and reviews of relevant national housing, land and property laws are one of the first activities undertaken by rule of law and restitution rights advisers working in United Nations peace operations. This sometimes is straight-forward, but more often, it is a daunting task. When completed a consolidated picture is provided of the state of current law, which can then be compared to texts, such as the Principles, with a view to finding discrepancies and suggesting ways to overcome them.

**When conducting a gender analysis** – As noted in numerous situations, existing laws or social practices might discriminate directly or indirectly against women. It is, therefore, important that any restitution-related new or existing legislation is analysed to identify provisions that may result in discrimination against women.

## Frequently asked questions

### Has the international community been involved in legislative drafting efforts?

The international community has been an active participant in a range of legislative drafting efforts in support of housing and property restitution rights, in, for example, Albania, Bosnia and Herzegovina, Georgia and Kosovo. This involvement has ensured that a balanced, neutral and fair approach is taken in these processes. When closely allied with national legal experts, such legislative efforts can provide a good opportunity to ensure that the relevant

international legal principles are included within new national laws and that such laws are in full conformity with international best practice on the Principles.

### Are restitution rights passed on to heirs of refugees and displaced persons?

For cases of long-term displacement in which the original and legitimate holders of housing and property restitution rights have died, heirs maintain and “inherit” these restitution rights if they expressly indicate their continued assertion over the rights associated with the housing, land and property under consideration.

## Useful guidance

### United Nations and international guidance:

- Scott Leckie (ed), *Returning Home: Housing and Property Restitution Rights for Refugees and Displaced Persons*, (Cambridge, United Kingdom, Cambridge University Press, 2007).
- Barbara McCallin, *Restitution and Legal Pluralism in Contexts of Displacement*, Case Studies on Transitional Justice and Displacement (New York, ICTJ/Brooking, August 2012).
- Clara Sandoval and Miriam Puttick, *Reparations for the Victims of Conflict in Iraq: Lessons learned from comparative practice* (London, Minority Rights Group, November 2017), pp. 17–19.

<sup>215</sup> World Bank, “Colombia protects land and patrimony of internally displaced persons”, 13 August 2015, Available at [www.worldbank.org/en/results/2015/08/13/colombia-protects-land-and-patrimony-of-internally-displaced-persons](http://www.worldbank.org/en/results/2015/08/13/colombia-protects-land-and-patrimony-of-internally-displaced-persons)

<sup>216</sup> Colombia, Final Agreement to End the Armed Conflict.

## PRINCIPLE 19: Prohibition of arbitrary and discriminatory laws

- 19.1 States should neither adopt nor apply laws that prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.
- 19.2 States should take immediate steps to repeal unjust or arbitrary laws, and laws that otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.
- 19.3 States should ensure that all national policies related to the right to housing, land and property restitution fully guarantee the rights of women and girls to be protected from discrimination and to equality in both law and practice.

### Key issues

Principle 19 prohibits the adoption and application of arbitrary and discriminatory laws that may prejudice the housing, land and property restitution process. For example, laws of this nature, such as abandonment laws, are not universally arbitrary and can be a legitimate means of preventing speculation and ensuring the rational use of limited supplies of housing stock. However, selectively applying such laws to particular ethnic groups as a pretext

to prevent them from reclaiming their former homes and lands is clearly prohibited under Principle 19.

Practitioners must avoid bias or preferential treatment in the pursuit of housing, land and property restitution that perpetuates discrimination, undermines “social cohesion”, or generates resentment of the host population, secondary occupants or other communities not subject to housing, land and property restitution and its perceived benefits.

### Box 28: Legislative challenges in the Syrian Arab Republic

Numerous laws adopted prior and during the conflict in the Syrian Arab Republic have had a discriminatory effect, notably on perceived political opponents and refugees and displaced persons. One source of dispossession and discrimination results from the difficulty to fulfil legal procedures used during peacetime that are not adapted to the context of the insecurity and displacement associated with the current conflict. The requirement to contest an administrative or judicial decision within a certain deadline, apply in the place of original residence or provide numerous supporting documents are almost impossible to fulfil for refugees and displaced persons. These provisions may seriously jeopardize their housing, land and property rights unless new legal measures are adopted to consider the exceptional circumstances of the conflict and annul related loss of property.<sup>217</sup>

The pre-conflict situation was also characterized by general disconnect between land registries and the reality of tenure rights. As a result, many housing, land and property rights are not registered in the cadastre or are informal. The holders of such rights are at great risk of dispossession as it is difficult for them to prove their rights, particularly if they are displaced.<sup>218</sup>

<sup>217</sup> Barbara McCallin and Marie Kostrz, “Lessons learned from international experiences relevant to Syria’s housing, land and property issues”, March 2022. Available at <https://tda-sy.org/2022/03/24/53333/>

<sup>218</sup> Ibid.

## Opportunities for applying Principle 19

**During periods of legislative analysis and review** – Failing to rectify discriminatory, arbitrary or otherwise an unjust application of law in countries of return prevents successful restitution and may even contribute towards future instability and conflict. Assessing the judicial sector and monitoring the legal system are common in post-conflict and transitional justice situations and can be pursued even before a political agreement has taken effect or a transition has begun.

**Pursuing the equitable application of restitution laws** – Discriminatory restitution programmes further entrench social divisions and animosities, and are counter to post-conflict reconstruction and the fundamental international human rights principles and obligations. Handbook users must assist States to bring their national legislation on housing and property restitution into compliance with non-discrimination standards. Discriminatory restitution programmes may also manifest themselves in unanticipated ways, especially in situations under which the *status quo ante* itself discriminated against particular groups. In such cases, it may not be sufficient to simply restore the pre-displacement housing situation, and additional measures may be needed to ensure that housing rights are realized by all sectors of the population without discrimination.

## Frequently asked questions

### Have countries repealed laws that were contrary to internationally recognized housing, land and property restitution rights?

In Bosnia and Herzegovina, all sides to the conflict enforced laws on abandoned property or applied existing abandonment provisions to legitimize the ethnic cleansing and housing and property confiscation that took place during the war. One of the international community's most widely hailed contributions to Bosnia and Herzegovina was the role it played in ensuring the repeal of those draconian laws. Repealing arbitrary and/or discriminatory laws pertaining to housing, land and property is a prerequisite for the effective implementation of restitution rights.

### Are abandonment laws generally reasonable as a legal means of preventing speculation and ensuring that existing housing stock is used?

During times of peace and prosperity, laws disposing or transferring abandoned property may be wholly reasonable and legitimate. However, during a conflict, abandonment laws are designed to address an emergency or interim measure, but often they are exploited to the disadvantage of refugees and displaced persons. They also can be used to facilitate and entrench policies of ethnic cleansing or demographic manipulation. In such instances, abandonment laws impede the right to return and often violate the principles of non-discrimination and equality, as they usually apply to or are enforced against specific racial, ethnic, religious or other groups.

This explains many displaced persons' lack of confidence in their chances to return home in safety. In Israel, for example, the Custodian of Absentee Property Law of 1950 legislation defines persons who were expelled or fled, or have left the country after 29 November 1947 for any reason, as well as their movable and immovable property (mainly land, houses and bank accounts), as an "absentee". Property belonging to absentees was placed under the control of the newly proclaimed Custodian for Absentee Property. The Absentee Property Law was the main legal instrument used by Israel to take possession of the land belonging to Palestinian refugees and Muslim *waqf* properties across the Occupied Palestinian Territory.<sup>219</sup>

### What are some hidden or indirect forms of discrimination?

Discrimination can arise when access to restitution mechanisms is restricted to current citizens and/or current residents. The Supreme Court in Croatia ruled as unconstitutional a law that attempted to revoke ownership rights over private property for owners who had not lived in their property for more than ten years.<sup>220</sup> In other cases, restitution claims are restricted to certain periods of time during which the expropriation took place, in effect discriminating against other victims, who may have also suffered losses, but during a different (usually previous) historical period.<sup>221</sup> If practitioners identify any such patterns of discrimination, whether the discrimination is clearly intentional, this information should be brought to the attention of relevant authorities, the United Nations and NGOs involved in housing, land and property issues, accompanied by concrete suggestions for remedial action.

<sup>219</sup> See A/HRC/22/63.

<sup>220</sup> United States Department of State, Bureau of European and Eurasian Affairs, "Property restitution in Central and Eastern Europe", 3 October 2007. Available at <https://2001-2009.state.gov/p/eur/rls/or/93062.htm> and Tatjana Josipović, "Croatian Property Law after EU accession: adjustment of property law to EU Market freedoms", *Annales de la Faculté de Droit d'Istanbul*, vol. 46, No. 63 (2014), pp. 31-50. See also, E/CN.4/1994/47, p. 17.

<sup>221</sup> Schechla, Restoring values.

## Useful guidance

### United Nations guidance and documents:

- OHCHR, *Rule-of-Law Tools for Post-conflict States: Mapping the Justice Sector* (United Nations publication, 2006).

### Other sources:

- Susan Akram and others (eds), *International Law and the Israeli-Palestinian Conflict: A rights-based Approach to Middle East peace* (New York: Routledge, 2011).
- Agnès Hurwitz, Kaysie Studdard and Rhodri C. Williams, *Housing, Land, Property and Conflict Management: Identifying Policy Options for Rule of Law Programming* (International Peace Academy, 2016).
- Impunity Watch and Pax, “Violations of housing, land and property rights: an obstacle to peace in Syria: What can international policymakers do?”, March 2020. Available at <https://paxforpeace.nl/publications/violations-of-housing-land-and-property-rights-an-obstacle-to-peace-in-syria/>
- NRC, “The Absentee Property Law and its implementation in East Jerusalem”, 15 May 2013. Available at [www.nrc.no/resources/reports/the-absentee-property-law-and-its-implementation-in-east-jerusalem/](http://www.nrc.no/resources/reports/the-absentee-property-law-and-its-implementation-in-east-jerusalem/)

## PRINCIPLE 20: Enforcement of restitution decisions and judgments

- 20.1 States should designate specific public agencies to be entrusted with enforcing housing, land and property restitution decisions and judgements.
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- 20.2 States should ensure, through law and other appropriate means, that local and national authorities are legally obligated to respect, implement and enforce decisions and judgements made by relevant bodies regarding housing, land and property restitution.
- 
- 20.3 States should adopt specific measures to prevent the public obstruction of enforcement of housing, land and property restitution decisions and judgements. Threats or attacks against officials and agencies carrying out restitution programmes should be fully investigated and prosecuted.
- 
- 20.4 States should adopt specific measures to prevent the destruction or looting of contested or abandoned housing, land and property. In order to minimise destruction and looting, States should develop procedures to inventory the contents of claimed housing, land and property within the context of housing, land and property restitution programmes.
- 
- 20.5 States should implement public information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of non-compliance with housing, land and property restitution decisions and judgements, including failing to vacate occupied housing, land and property voluntarily and damaging and/or looting of occupied housing, land and property.

### Key issues

The re-establishment of the rule of law and the physical protection of people who wish to return to their homes are two of the most fundamental prerequisites of successful restitution programmes. Principle 20 recognizes that enforcement of judgments related to restitution is essential to the effective implementation of restitution policies and programmes, and are especially important in situations in which persons have been displaced because of violence and/or conflict. Indeed, the importance of including an enforcement arm within any restitution institution or an external entity subject to its control cannot be overemphasised. Restitution bodies should be given the powers required to enforce their decisions and ensure that governments and other relevant parties comply. Local and national governments should be legally obliged to accept decisions made by restitution bodies.

States should also ensure the prevention of obstacles to the enforcement of housing, land and property restitution decisions and judgments. Threats or attacks against officials and agencies carrying out restitution programmes and measures based on decisions and judgments must be fully investigated and prosecuted. The destruction, sabotage, booby-trapping or looting of contested or abandoned housing, land and property should be prevented. States

should develop laws and procedures to document and protect the housing, land and property that refugees and displaced persons were forced to abandon, including the contents of the housing, land and property.

A recent example of such an effort is the aforementioned Law for the Prevention Attention and Protection of Internally Displaced Persons in Honduras (see box 27). Finally, States are required to ensure that secondary occupants of abandoned housing, land and property are aware of their rights and their obligation to comply with the restitution decisions and judgements. For more information on secondary occupation, see Principle 17.

### Opportunities for applying Principle 20

**Prior to actual recovery and repossession of homes** – Because the restitution process is often complex and comprised of layers of laws, history and conflict, restitution mechanisms must also be given the necessary flexibility to deal effectively with the claims submitted to them. In South Africa, it was found that a primarily judicial approach to restitution in the early years of the restitution process proved to be time and resource-intensive, and that it slowed the restitution process considerably. When more flexible,

largely administrative, procedures were established, a greater number of claims were able to be considered and cases were closed at a much more rapid rate. Courts still have final oversight under these procedures, but they are only used when claimants believe they did not receive fair and equitable redress. The more flexibility built into restitution systems increases, the greater likelihood their objectives will be achieved. Obviously, safeguards need to be built into these systems to ensure that such flexibility does not result in a reduction of claimants' rights.

**Within the context of peace operation-driven land and property initiatives** – Numerous examples encourage prompt attention and response to housing, land and property restitution within peace operations. The United National Transitional Authority in East Timor established a Land and Property Unit, which was responsible for a range of relevant issues, including advocacy efforts in support of restitution. Another example is from Darfur in Sudan (see box 15). However, the practice is uneven and there are only a few historical examples from the Middle East and North Africa region where peace operations embodied housing, land and property restitution objectives or capabilities. However, options for international cooperation and assistance in this context could be, for example, the development of curricula for the United Nations Department of Peace Operations and local law enforcement to be conversant with housing, land and property and restitution rights.

**When multiple local or national authorities are involved in the enforcement of restitution decisions and judgments** – Enforcement of restitution rights is almost invariably a difficult and complex undertaking, notwithstanding local conditions, history or cultural values towards housing, land and property. Including an enforcement arm within a restitution institution or an external entity subject to its control is highly desirable, but it is not always possible. In Iraq, for example, the Property Claims Commission has not had the power to enforce the decisions it takes. It relies on the Enforcement Departments and the Property Registration Offices, which are part of the Ministry of Justice. While these bodies are legally bound to implement the decisions taken by the Commission, the Commission has no control or oversight over their actions. In such circumstances, it is important to ensure coordination and collaboration between the restitution institution and the authorities in charge of enforcement.

Experience shows that even where a restitution institution does not have the legal power to enforce its decisions, it is crucial for that institution to track and monitor such enforcement, especially in post-conflict contexts where the State apparatus is weakened and overburdened. By doing this, the restitution body can sensitize the State authorities to the problems encountered and put pressure on the authorities to take adequate measures to ensure the timely implementation and enforcement of its decisions.

## Frequently asked questions

### What can be done if local or national authorities resist enforcing restitution decisions?

Reliance on civil authorities to enforce a restitution decision should be the first and preferred option. However, when relevant and necessary, national law enforcement services (police or gendarme), international police forces and peacekeeping forces become formally involved in the enforcement and protection of housing, land and property

rights, care needs to be exercised that such involvement does not take on a repressive character, threatening the rights and perceptions of the local population. The civilian elements of peace operations may need to gain the support of the military in a range of housing, land and property rights matters, including prevention of illegal forced evictions and arresting those responsible, stopping acts of violence against civilians, protecting housing against looting, damage or destruction and assisting in the enforcement of restitution rights by evicting secondary occupants deemed to be illegally occupying housing.

## Useful guidance

- Jalena Bjelica, “Afghanistan’s returning refugees: Why are so many still landless?”, Afghanistan Analysis Network, 29 March 2016. Available at [www.afghanistan-analysts.org/en/reports/migration/afghanistans-returning-refugees-why-are-so-many-still-landless-2/](http://www.afghanistan-analysts.org/en/reports/migration/afghanistans-returning-refugees-why-are-so-many-still-landless-2/)
- NRC, *Triumph of Form Over Substance: Judicial Termination of Occupancy Rights in the Republic of Croatia and Attempted Legal Remedies – Analysis of 586 Individual Cases*, Civil Rights Project (Croatia, October 2002).

## PRINCIPLE 21: Compensation

- 21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.
- 21.2 States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.

### Key issues

Understanding the relationship between compensation and restitution is vital for restitution practitioners. Restitution refers to returning the original house, plot of land, vehicle and other properties to the legitimate owner or user. Compensation refers to an amount of money or an alternative house, plot of land or equivalent property that is provided to the legitimate owner or user when restitution of the original asset is not possible.

In line with Principle 2, Principle 21 outlines that recovery of the original housing, land and property is the preferred remedy. Compensation *in lieu* of restitution, as understood within the Principles, should be narrowly applied as a remedy and reserved only for specific cases when restitution is not factually possible. Compensation must be granted with the same intention as restitution, so that victims are returned as far as possible to their original pre-loss or pre-injury position (*status quo ante*). As noted under Principle 2, Handbook users should be aware that there may be actors in situations of conflict and displacement that wish to prevent restitution and the return of (certain groups of) refugees and displaced persons to areas of origin and, therefore, offer them cash or in-kind compensation to extinguish outstanding restitution claims. These practices need to be closely monitored to ensure that they are not inconsistent with the norms reflected in the Principles. In addition to situations in which restitution is factually impossible, compensation *in lieu* of restitution may only be used when the injured party knowingly and voluntarily accepts this alternative. The injured parties should be

aware that such a choice may conclude the restitution process for them, thereby forfeiting future housing, land and property restitution claims.

There is a need to distinguish between compensation *in lieu* of restitution and compensation to complete efforts to return victims to their original pre-loss or pre-injury housing, land and property position. Even when victims can recover their original housing, land and property (for example, as a result of a restitution process or because secondary occupants vacated the property voluntarily), they may still be unable to reoccupy their home because significant damage may render it inhabitable. Displacement caused by conflict is almost invariably accompanied by widespread damage and destruction of housing, land and property. The most recent example is the Israel/Gaza crisis that started in October 2023. By November of that year, it was reported that attacks by Israel on targets in Gaza destroyed or damaged 45 per cent of all housing units in the Gaza strip;<sup>222</sup> a figure that will likely increase as the hostilities continue. In northern Iraq, approximately one-third of the housing stock in the old city of Mosul were severely damaged or completely destroyed as a result of the military operations in 2016–2017.<sup>223</sup> During conflicts, in Bosnia and Herzegovina, 65 per cent of housing was destroyed and in East Timor, some 80 per cent of the housing stock was reduced to rubble. When reclaimed housing, land and property is damaged or destroyed, full restitution (*restitutio in integrum*) is not possible. In such instances, a combination of restitution rights guaranteeing the claimant the right to recover their original housing, land and property (in such cases as competing ownership claims and secondary occupation) *and* the provision of

<sup>222</sup> OHCHR, “Gaza: destroying civilian housing and infrastructure is an international crime, warns UN expert”, press release, 8 November 2023. Available at [www.ohchr.org/en/press-releases/2023/11/gaza-destroying-civilian-housing-and-infrastructure-international-crime#:~:text=“Carrying%20out%20hostilities%20with%20the,the%20right%20to%20adequate%20housing](http://www.ohchr.org/en/press-releases/2023/11/gaza-destroying-civilian-housing-and-infrastructure-international-crime#:~:text=“Carrying%20out%20hostilities%20with%20the,the%20right%20to%20adequate%20housing)

<sup>223</sup> UN-Habitat, Mosul Portal, Multi-Sector Damage Assessment, 8 July 2017, p. 2. Available at [http://unhabitatiraq.net/mosulportal/wp-content/uploads/2017/07/170713\\_Damage-Assessment.pdf](http://unhabitatiraq.net/mosulportal/wp-content/uploads/2017/07/170713_Damage-Assessment.pdf)



financial assistance in the form of compensation for the purposes of rebuilding or repairing the home concerned is the required remedy. Restitution should, therefore, include the provision of compensation to restore the value of the loss of the destroyed property.

However, in some instances, the focus of restitution processes has been on the recovery of original housing, land and property and less on the provision of (financial or in-kind) compensation to repair or rebuild (reclaimed) housing, land and property in contexts of large-scale

damage and destruction. For instance, in Kosovo, the Housing and Property Claims Commission found that the residential objects of almost 11,000 restitution claims were destroyed, but it did not have jurisdiction to award compensation for damage to or destruction of property. Subsequently, no adequate remedy to the owners of these properties was provided.<sup>224</sup> On the other hand, in 2018 Iraq reactivated a compensation mechanism to implement laws that stipulate that all Iraqi citizens affected by or harmed during military operations and terrorist actions are entitled to financial compensation (see box 29).

### Box 29: Compensation for damaged (reclaimed) housing, land and property in Iraq<sup>225</sup>

Systematic housing, land and property violations committed in conflict-affected areas in Iraq after 2003, such as the unlawful seizure, sale, systematic looting and destruction of housing, land and property, prevented many refugees and displaced persons from returning to their areas of origin. Those who were able to recover their original (but damaged) housing, land and property often lacked the financial resources to rebuild it. Procedures to claim compensation were introduced to address this challenge. Law No. 20 of 2009, Law No. 57 of 2015 (first amendment) and Law No. 2 of 2020 (second amendment) confirm that all Iraqi citizens affected or harmed during military operations and terrorist actions are entitled to financial compensation.

According to article 2 of Law No. 20, five categories are eligible for compensation, one of which concerns damaged property. Law No. 20 sets out six focus areas of property damages, namely vehicles, houses, farming lands, furniture, shops and companies. All claims are considered on a case-by-case basis and the compensation amount depends on the level of damage to each property. Compensation is limited and does not cover missed earnings, such as revenue or rent, or damages resulting from criminal actions, such as theft, looting or vandalism.

A central compensation committee based in Baghdad oversees the overall compensation process. It has the remit to approve, amend or refuse recommendations issued by subcommittees relevant to property compensation, review the recommendations of the subcommittees and report their conclusions to the Ministry of Finance, which handles the disbursements of the monetary allocations to successful claimants. Subcommittees, one in Baghdad and one in each conflict-affected governorate, including the Kurdistan region of Iraq, were established to facilitate people's claims for compensation. The subcommittees receive requests for compensation, assess the level of damage to properties, adhering to the procedures set by the Ministry of Finance, and submit recommendations to the Central Compensation Committee. The subcommittees can make decisions on compensation for issues not related to property, but only the Central Compensation Committee issues decisions on property compensation. The subcommittees can notify claimants, the Ministry of Finance and the Martyr's Foundation on decisions taken.

The housing, land and property area of responsibility of the Global Protection Cluster in Iraq has drafted property compensation guidelines to advise humanitarian actors working on compensation and housing, land and property-related issues, which answers key questions on the claims submission process, such as the following:

- Who can submit a claim for compensation?
- What are the required documents for submitting a compensation claim?
- Where should a compensation claim be submitted?
- How can a claimant prove property damage?
- How will claims be verified?
- What are the procedures for submitting a claim for compensation?

The guidelines set out the property compensation process generally and in each governorate. During the period 2016–2019, a total of 47,085 claims were submitted to the compensation committees. More than \$300 million was reportedly disbursed to claimants during those years.

<sup>224</sup> Organization of Security and Co-operation in Europe, Mission in Kosovo, "Challenges in the resolution of conflict-related property claims in Kosovo", June 2011. Available at [www.osce.org/kosovo/80435](http://www.osce.org/kosovo/80435)

<sup>225</sup> Iraq housing, land and property sub-cluster, "Property Compensation Guidelines: based on Iraqi Law 20, 2009 and Law 57, 2015 (first amendment)", December 2018, Available at [www.sheltercluster.org/sites/default/files/docs/property\\_compensation\\_guidelines.pdf](http://www.sheltercluster.org/sites/default/files/docs/property_compensation_guidelines.pdf); and Iraq, Law No. 20 of 2009: Law on Compensation of Victims of War Operations, Military Mistakes and Terrorist Operations, 7 January 2009

## Opportunities for applying Principle 21

**When displacement occurs long before remedies are made available** – Compensation *in lieu* of restitution may be the more appropriate remedy when the displacement occurred many years before a remedy was made available and the victims, or their heirs, have rebuilt their lives elsewhere and prefer to stay in the new location and

receive monetary compensation for the loss of their original housing, land and property. This may be the case particularly in a situation in which one or more generations have never lived in the housing, land and property from which their parents or grandparents were displaced. In such instances, care must be taken so that all those entitled to restitution are clearly informed of all their rights and that their choice is freely taken when they have full knowledge of all these rights.

### Box 30: Housing, land and property valuation<sup>226</sup>

The focus of the Pinheiro Principles are on the provision of compensation to restore victims to their original pre-loss or pre-injury positions. The calculation of compensation in such contexts can be challenging. Compensation based solely on “market value” may not allow people to rehouse themselves adequately or reaccess the livelihood opportunities they had. The appropriate valuation of housing, land and property, therefore, plays a crucial role in implementing restitution laws and programmes.

It should be noted that methodologies for housing, land and property valuation are also pertinent in times of peace. However, only a few countries in the Middle East and North Africa region have developed unified and consolidated property valuation methodologies that can guide property taxation, compensation in cases of expropriation, relocation, land readjustment or similar situations. In crisis-affected contexts, valuation methodologies enable the definition of the current market-value of housing, land and property for calculating compensation and the value of the share given in compensation.

Such methodologies also assess the options to be considered along restitution, calculate the support to be given for repair or reconstruction and assess the feasibility of urban renewal interventions that require the relocation of original owners as alternatives to the reconstruction in the place of origin. One challenge is that most well-established housing, land and property valuation methodologies apply to formally registered properties, leaving the large amount of informal or irregular developments in a gray area, which weakens the rights of housing, land and property owners. The Global Land Tool Network and several other actors have developed global guidelines to address this shortcoming entitled “Valuation of Unregistered Land: A Practice Manual” (see the useful guidance section).

Valuation needs to be in compliance with international law and human rights standards, which should ensure that valuation goes beyond physical visible structures. For instance, the Impoverishment Risks and Reconstruction Model considers elements, such as landlessness, joblessness, homelessness, marginalization, increased morbidity and mortality, food insecurity, loss of access to common property and social (community) disarticulation. Similarly, eviction impact assessments methodologies can help in going beyond mere physical structures and quantifying other losses of personal, real or other property or goods, including rights or interests in property and any of the economic and social losses incurred.

<sup>226</sup> Habitat International Coalition, “Put a number on it: Quantifying costs, losses and damages from the violation of housing and land rights”, 13 October 2013, pp. 8-11. Available at [www.hlrn.org/img/documents/Counting%20the%20Costs%20of%20Violations.pdf](http://www.hlrn.org/img/documents/Counting%20the%20Costs%20of%20Violations.pdf)  
Habitat International Coalition, “Counting costs: quantifying the consequences of forced evictions and displacement”, (includes a link to the housing rights violation loss matrix tool), April 2012. Available at: [www.hlrn.org/img/Preface\\_Apr\\_2012.pdf](http://www.hlrn.org/img/Preface_Apr_2012.pdf)  
Huma Gupta, *Home Sweet Home: Housing Practices And Tools That Support Durable Solutions for Urban IDPs* (Geneva, Norwegian Refugee Council, March 2015), pp. 54–55; and Michael M. Cernea and Christopher McDowell (eds), “Risks and reconstruction: experiences of resettlers and refugees” (Washington, D. C., World Bank, 2000).

## Frequently asked questions

### Can compensation in lieu of restitution be offered without first attempting to secure restitution rights?

No. According to the Pinheiro Principles, restitution should be the primary remedy for reversing displacement, unless it is the expressed wish of refugees and displaced persons to receive compensation *in lieu* of restitution. Compensation cannot be imposed on refugees or displaced persons, and unless it is the remedy preferred by those displaced (on the understanding that the recovery of original housing and properties may be no longer possible), compensation should be reserved for instances in which no other remedy is available, and in many other instances, it should be combined with restitution based on repossession as a means of strengthening the likelihood of sustainable repatriation.

### Is cash the only form of acceptable compensation?

While monetary compensation is often viewed as a simple means of settling housing, land and property restitution claims, cash compensations should be reserved only for economically assessable damage resulting from violations of international human rights and humanitarian law, such as physical and mental harm, lost opportunities (including education), material damages or loss of earnings, harm to reputation or dignity, costs required for legal or expert assistance, medicines and medical services, and psychological and social services, and lost or destroyed immovable and/or movable assets, including the destruction or damage of one's original home. Even in those cases, cash compensation should be avoided in countries without a functioning housing and land market, secure saving banks, educational systems and rehabilitation services. Depending on the situation of individuals and the families, cash assistance may be used for daily vital expenses rather than housing. In the absence

of complementary support to housing or the use of cash as part of a wider national housing strategy, it is unlikely to provide a sustainable and adequate housing solution.

The obvious first alternative to cash compensation is the construction by the State (or subsidized by the State) of adequate, affordable and accessible housing, which can be made available to those in need of housing, including those holding the right to restitution. Other housing-based or fair alternative arrangements might involve a range of creative measures, such as the provision of alternative land plots, a public housing fund issuing government bonds, vouchers or individual subsidies to be redeemed in the construction of replacement housing, government assistance for displaced persons and returnees in finding alternative housing in their area of origin, displacement or a third location, tax reductions to returnees for a fixed period, favourable placement on official housing waiting lists, State-land plots allocated to the returnees and/or housing credits for building materials should returnees choose to build new housing themselves.

### Is destroyed housing exempt from restitution claims?

While the destruction or non-existence of claimed housing and property occurs in many countries dealing with restitution, such situations cannot be used as a rationale for the payment of compensation *in lieu* of restitution. Rather, care must be taken to ensure that restitution remedies are interpreted in a broad and flexible manner (which may involve, but not be replaced by compensation). Restitution can be claimed and awarded, even to buildings and villages or towns that physically no longer exist, notwithstanding only to confirm the ownership or possessory rights of the claimant so that he/she can be eligible to reconstruction assistance. The mere destruction of property does not and cannot extinguish such claims even though such circumstances complicate the restitution process.

### Box 31: Development and humanitarian (shelter) assistance in the context of restitution processes

In many (post-)conflict and displacement situations, repair and reconstruction assistance by (international) organizations to address urgent shelter needs or achieve development objectives may benefit victims who repossessed a damaged home. Government-led mechanisms to provide compensation for damaged housing, land and property may also be available to those victims, either as part of a restitution process or as a stand-alone mechanism focusing on compensation (such as in Iraq and Ukraine). It is important for Handbook users to understand the operational processes of government-led compensation/restitution mechanisms as well as the relation between such mechanisms and humanitarian (shelter) assistance. For instance, in certain situations, receiving even limited reconstruction assistance from an NGO may render the person ineligible to apply for compensation under the government-led mechanism. It is, therefore, important that organizations and potential beneficiaries are aware of eligibility criteria.<sup>227</sup>

<sup>227</sup> See, for instance, Shelter Cluster Ukraine, Information Note – Shelter Assistance Partner engagement with people in light of the Ukraine Law on Compensation for Damaged and Destroyed Property, 6 June 2023. Available at <https://reliefweb.int/report/ukraine/information-note-shelter-assistance-partner-engagement-people-light-ukraine-law-compensation-damaged-and-destroyed-property-enuk>

## Useful guidance

### United Nations and international guidance:

- Human Rights Council, “Basic principles and guidelines on development-based evictions and displacement”, 5 February 2007 (A/HRC/4/18), annex I.
- Mike McDermott and Peter Wyatt, *Valuation of unregistered land – a practice manual* (Nairobi, UN-Habitat, June 2021).
- Habitat International Coalition, “Put a number on it: Quantifying costs, losses and damages from the violation of housing and land rights”, 13 October 2013, pp. 8–11. Available at [www.hlrn.org/img/documents/Counting%20the%20Costs%20of%20Violations.pdf](http://www.hlrn.org/img/documents/Counting%20the%20Costs%20of%20Violations.pdf)
- Ukraine Protection Cluster, “Compensation for properly damaged or destroyed as a result of The conflict in Eastern Ukraine: key messages”, January 2020. Available at <https://reliefweb.int/report/ukraine/compensation-property-damaged-or-destroyed-result-conflict-eastern-ukraine-key>

### Other sources:

- Luke T. Lee, “The right to compensation: refugees and countries of Asylum”, *The American Journal of International Law*, vol. 80, No. 3 (1986).



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## SECTION VI

# THE ROLE OF THE INTERNATIONAL COMMUNITY, INCLUDING INTERNATIONAL ORGANIZATIONS

### **PRINCIPLE 22: Responsibility of the international community**

- 22.1 The international community should promote and protect the right to housing, land and property restitution, as well as the right to voluntary return in safety and dignity.
- 
- 22.2 International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition against unlawful or arbitrary displacement and, in particular, the prohibition under international human rights law and related standards on the practice of forced evictions.

- 22.3 International organisations should work with national governments and share expertise on the development of national housing, land and property restitution policies and programmes and help ensure their compatibility with international human rights, refugee and humanitarian law and related standards. International organisations should also support the monitoring of their implementation.
- 
- 22.4 International organisations, including the United Nations, should strive to ensure that peace agreements and voluntary repatriation agreements contain provisions related to housing, land and property restitution, including through inter alia the establishment of national procedures, institutions, mechanisms and legal frameworks.
- 
- 22.5 International peace operations, in pursuing their overall mandate, should help to maintain a secure and stable environment wherein appropriate housing, land and property restitution policies and programmes may be successfully implemented and enforced.
- 
- 22.6 International peace operations, depending on the mission context, should be requested to support the protection of the right to housing, land and property restitution, including through the enforcement of restitution decisions and judgements. Members of the Security Council should consider including this role in the mandate of peace operations.
- 
- 22.7 International organisations and peace operations should avoid occupying, renting or purchasing housing, land and property over which the rights holder does not currently have access or control, and should require that their staff do the same. Similarly, international organisations and peace operations should ensure that bodies or processes under their control or supervision do not obstruct, directly or indirectly, the restitution of housing, land and property.

## Key issues

This Principle confirms the important role of the international community in preventing displacement and housing, land and property rights violations, promoting the right to restitution and overseeing the successful implementation of restitution programmes. In addition to supporting and sharing expertise with national governments regarding the development of restitution policies and programmes, the Principles note that international organizations, including the United Nations, should strive to ensure that peace agreements and voluntary repatriation agreements contain provisions on the establishment of national procedures, institutions, mechanisms and legal frameworks for facilitating the restitution process. Recognizing that restitution programmes cannot be properly implemented under conditions of instability, Principle 22 also affirms the important role of international peace operations in creating a secure environment for the protection of the right to restitution.

Discussions on restitution should be part of broader discussions on housing, land and property issues among actors working on the humanitarian, development and peace nexus. The objective is to ensure a holistic and coherent approach that provides clarity on the sequencing and complementarity of the housing, land and property rights protection interventions. Development actors, notably those with expertise on land administration and urban governance, should share their technical expertise to address the structural causes of tenure insecurity and prevent disputes over competing housing, land and property rights. Many of the tools that have been elaborated in development work can be adapted to displacement contexts. As noted previously, STDM was used to map the housing, land and property rights of Yazidi returnees in Iraq and resulted in the issuing of 7,500 legally recognized occupancy certificates for this community by local authorities in collaboration with UN-Habitat.<sup>228</sup> For more information on STDM, see the section on Principle 15).

<sup>228</sup> UN-Habitat Iraq, "Leave no one behind: land tenure in post-conflict Iraq", Urbanet, 16 March 2021. Available at [www.urbanet.info/leave-no-one-behind-land-tenure-in-post-conflict-iraq/](http://www.urbanet.info/leave-no-one-behind-land-tenure-in-post-conflict-iraq/) and Oumar Sylla and others, "Land and conflict: taking steps towards peace", *Forced Migration Review*, October 2019.

## Opportunities for applying Principle 22

**Coordinating multi-agency restitution efforts** – When the international community participates in restitution efforts at the national level, this is likely to be a multi-agency effort involving the staff of many different organizations. To prevent duplication of efforts or mutually exclusive activities, users of the Handbook must ensure that a

coordinated approach among the agencies involved in the question of restitution is taken. Closer links at the field and headquarters levels need to be developed, and the most effective means for coordinating the restitution activities of the agencies need to be established. Without a coordinated approach to these issues (which also directly involves the relevant local and national governmental institutions if there is substantial international involvement), restitution can be seriously threatened, or at best, considerably slowed.

### Box 32: The return and reconstruction task force and the property legislation implementation plan in Bosnia and Herzegovina<sup>229</sup>

In Bosnia and Herzegovina more than one hundred organizations were involved in the restitution, reconstruction and return processes. Several coordination structures were created in relation to reconstruction and return. The Return and Reconstruction Task Force was set up in 1997 by the Office of the High Representative and UNHCR. Its 1999 Action Plan aimed to support return through a multi-dimensional approach that included restitution of property, demining, reconstruction of housing and infrastructure, support to employment and health, and the provision of security by the United Nations peacekeeping mission in return areas. In 1999, the international community also launched the Property Legislation Implementation Plan with the objective to monitor the implementation of property laws. The Plan had a coordination cell at the national level and a network of focal points from participating organizations (UNHCR, Organization for Security and Co-operation in Europe, Office of the High Representative and the United Nations Mission in Bosnia and Herzegovina). These structures have greatly improved the unity and transparency of international action on return and restitution, and coordination by assigning clear responsibilities to various actors implementing the Return and Reconstruction Task Force and Property Legislation Implementation Plans.

## Frequently asked questions

### What special measures has the international community pursued to secure restitution rights?

One of the more interesting examples of how the international community facilitated the exercising of restitution rights is the Property Legislation Implementation Plan, which was implemented in Bosnia and Herzegovina. Although such initiatives are not always relevant to restitution cases nor possible to carry out, the Property Legislation Implementation Plan is a good example of how a coordinated approach by the main international agencies can play a decisive role in successfully monitoring a restitution process led by domestic institutions. In other instances, the international community has assisted in the filing of human rights complaints to relevant courts, treaty bodies or other international policy forums.

### How can the international community best avoid undermining the legitimate housing, land and property restitution rights of refugees and displaced persons?

Principle 22.7 addresses the potentially negative impacts that international organizations can have on the enjoyment of housing, land and property restitution rights in countries where they operate, and urges agencies to avoid using or buying housing, land or property belonging to refugees and displaced persons. There are many examples of staff of international organizations residing in refugee homes while working with peace operations. Great care should be exercised to ensure that the restitution rights of refugees and displaced persons are neither undermined nor diminished because members of the international community have occupied their homes. Handbook Users should encourage their organizations to adopt appropriate policies to deal with this question. In Kosovo, and Bosnia and Herzegovina, United Nations staff were asked to prove that the owner of accommodation rented by United Nations staff was, in fact, the legitimate owner.

<sup>229</sup> Office of the High Representative, 1999 RRTF Action Plan, 15 January 1999. Available at [www.ohr.int/ohr\\_archive/1999-rrtf-action-plan/](http://www.ohr.int/ohr_archive/1999-rrtf-action-plan/); and Office of the High Representative, PLIP Inter-Agency Framework, document OHR/OSCE/UNHCR/UN/CRPC, 15 November 2010. Available at [www.ohr.int/ohr\\_archive/plip-inter-agency-framework-document/](http://www.ohr.int/ohr_archive/plip-inter-agency-framework-document/)

## Useful guidance

### United Nations and international guidance:

- Inter-Agency Standing Committee, *Growing the Sheltering Tree: Protecting Rights Through Humanitarian Action – Programme & Practices Gathered from the Field* (Geneva, Inter-Agency Standing Committee, 2002).
- UNHCR and National Human Rights Commission, *Land, Housing and Property, Proposals to the Parties for Comprehensively Addressing Land, Housing and Property Rights in the Context of Refugee and IDP Return within and to Sri Lanka* (Colombo, UNHCR and National Human Rights Commission, 22 April 2003).
- UNDP and UNHCR, Global Cluster for Early Recovery, (Technical Working Group on Durable Solutions) with the Global Protection Cluster. *Durable Solutions Preliminary Operational Guide* (New York, UNDP, January 2016).
- United Nations, Guidance Note of the Secretary-General: The United Nations and Land and Conflict, March 2019. Available at <https://unhabitat.org/sites/default/files/documents/2019-05/sg-guidance-note-on-land-and-conflict-march-2019-1.pdf>
- United Nations in Iraq, “Leave no one behind: land tenure in post-conflict Iraq”, March 2021. Available at <https://iraq.un.org/en/122187-leave-no-one-behind-land-tenure-post-conflict-iraq>
- IOM, Global Protection Cluster on Housing, Land and Property and Solutions Alliance, *Guidance Note: Integrating Housing, Land and Property Issues into Key Humanitarian, Transitional and Development Planning Processes* (Geneva, 2018).

### Other sources:

- Oumar Sylla and others, “Land and conflict: taking steps towards peace”, *Forced Migration Review*, October 2019.





## SECTION VII

# INTERPRETATION

### PRINCIPLE 23: Interpretation

- 23.1 The Principles on housing and property restitution for refugees and displaced persons shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognised under international human rights, refugee and humanitarian law and related standards, or rights consistent with these laws and standards as recognised under national law.

Principle 23 on interpretation constitutes a basic savings clause, which prohibits any interpretation that limits, alters or otherwise prejudices the rights recognized under international human rights, refugee or humanitarian law and related standards, or rights consistent with these laws

and standards as recognized under national law. This ensures that the Principles are not misused in any way to justify the violation of human rights or other international legal provisions in unforeseen circumstances that may arise in the future.

# CONCLUDING REMARKS

Refugees and displaced persons in the Middle East and North Africa region – and worldwide – have a right to a safe, voluntary and dignified return to their original homes and lands. For many refugees and other displaced persons, dispossession of their homes and lands is at the root of their displacement, and, therefore, one of the prime concerns for those returning or attempting to return to their countries or territories of origin is the resolution of housing, land and property issues before and subsequent to return.

The objective of this Handbook is to illustrate some of the challenges, and most importantly, some of the possible solutions to ensuring housing and property restitution in the Middle East and North Africa region. The majority of the examples cited herein do not constitute a perfect solution and challenges have been encountered in their conceptualization, implementation and conclusion. Nevertheless, the examples highlight opportunities related to housing and property restitution and the fulfilment of related human rights.

While the ultimate responsibility for securing the implementation of the rights found in the Pinheiro Principles rests with the State, the examples provided in this Handbook are actions that can be implemented by authorities, international organizations and NGOs – individually and jointly. A human rights-based approach to housing and property restitution entails putting people and their rights at the centre of the measures taken and addressing the root causes of their displacement.

This Handbook is the first step towards bringing the Pinheiro Principles closer to the Middle East and North Africa region by presenting examples of their practical application in the light of realities on the ground. The examples and lessons learned presented herein will hopefully inspire and assist future interventions aimed at securing the right to restitution in the region, through which the Principles will continue to live on.

# ANNEX I

## THE PINHEIRO PRINCIPLES

### Preamble

**Recognizing** that millions of refugees and displaced persons worldwide continue to live in precarious and uncertain situations, and that all refugees and displaced persons have a right to voluntary return, in safety and dignity, to their original or former habitual homes and lands;

**Underscoring** that voluntary return in safety and dignity must be based on a free, informed, individual choice and that refugees and displaced persons should be provided with complete, objective, up to date, and accurate information, including on physical, material and legal safety issues in countries or places of origin;

**Reaffirming** the rights of refugee and displaced women and girls, and recognizing the need to undertake positive measures to ensure that their rights to housing, land and property restitution are guaranteed;

**Welcoming** the many national and international institutions that have been established in recent years to ensure the restitution rights of refugees and displaced persons, as well as the many national and international laws, standards, policy statements, agreements and guidelines that have recognized and reaffirmed the right to housing, land and property restitution;

**Convinced** that the right to housing, land and property restitution is essential to the resolution of conflict and to post-conflict peace-building, safe and sustainable return and the establishment of the rule of law, and that careful monitoring of restitution Programs, on the part of international organizations and affected states, is indispensable to ensuring their effective implementation;

**Convinced also** that the implementation of successful housing, land and property restitution Programs, as a key element of restorative justice, contributes to effectively deterring future situations of displacement and building sustainable peace;

### Section I. Scope and Application

#### 1. Scope and Application

1.1 The Principles on Housing and Property Restitution for Refugees and Displaced Persons articulated herein are designed to assist all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence.

1.2 The Principles on Housing and Property Restitution for Refugees and Displaced Persons apply equally to all refugees, internally displaced persons and to other similarly situated displaced persons who fled across national borders but who may not meet the legal definition of refugee, (hereinafter ‘refugees and displaced persons’) who were arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which displacement originally occurred.

### Section II. The Right to Housing and Property Restitution

#### 2. The Right to Housing and Property Restitution

2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy to displacement and as a key element of restorative justice. The right to restitution exists as a distinct right and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

Note: Pinheiro, Paulo Sérgio de M.S., Housing and property restitution in the context of the return of refugees and internally displaced persons : final report of the Special Rapporteur, Paulo Sérgio Pinheiro : addendum, July 2005. Available at <https://digitallibrary.un.org/record/524251?ln=en&v=pdf>

## Section III. Overarching Principles

### 3. The Right to Non-Discrimination

3.1 Everyone has the right to non-discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3.2 States shall ensure that de facto and de jure discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law.

### 4. The Right to Equality Between Men and Women

4.1 States shall ensure the equal right of men and women, and the equal right of boys and girls, to the enjoyment of housing, land and property restitution. In particular, States shall ensure the equal right of men and women, and the equal right of boys and girls, to inter alia voluntary return in safety and dignity; legal security of tenure; property ownership; equal access to inheritance; as well as the use, control of and access to housing, land and property.

4.2 States should ensure that housing, land and property restitution Programs, policies and practices recognize the joint ownership rights of both the male and female heads of the household as an explicit component of the restitution process, and that restitution Programs, policies and practices reflect a gender sensitive approach.

4.3 States shall ensure that housing, land and property restitution Programs, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard.

### 5. The Right to be Protected from Displacement

5.1 Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.

5.2 States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards and should extend these protections to everyone within their legal jurisdiction or effective control.

5.3 States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.

5.4 States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.

### 6. The Right to Privacy and Respect for the Home

6.1 Everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home.

6.2 States shall ensure that everyone is provided with safeguards of due process against such arbitrary or unlawful interference with his or her privacy and his or her home.

### 7. The Right to Peaceful Enjoyment of Possessions

7.1 Everyone has the right to the peaceful enjoyment of his or her possessions.

7.2 States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general Principles of international law. Whenever possible, the ‘interest of society’ should be read restrictively, so as to mean only a temporary interference with the right to peaceful enjoyment of possessions.

### 8. The Right to Adequate Housing

8.1 Everyone has the right to adequate housing.

8.2 States should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.

### 9. The Right to Freedom of Movement

9.1 Everyone has the right to freedom of movement and the right to choose his or her residence. No one shall be arbitrarily or unlawfully forced to remain within a certain territory, area or region. Similarly, no one shall be arbitrarily or unlawfully forced to leave a certain territory, area or region.

- 9.2 States shall ensure that freedom of movement and the right to choose one's residence are not subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others and are consistent with international human rights, refugee and humanitarian law and related standards.

## **Section IV. The Right to Voluntary Return in Safety and Dignity**

### **10. The Right to Voluntary Return in Safety and Dignity**

- 10.1 All refugees and displaced persons have the right to voluntarily return to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up to date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.
- 10.2 States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of state succession, nor can it be subject to arbitrary or unlawful time limitations.
- 10.3 Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property.
- 10.4 States should, when necessary, request from other States or international organizations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons.

## **Section V. Legal, Policy, Procedural and Institutional Implementation Mechanisms**

### **11. Compatibility with International Human Rights, Refugee and Humanitarian law and Related Standards**

- 11.1 States should ensure that all housing, land and property restitution procedures, institutions, mechanisms and legal frameworks are fully compatible with international human rights, refugee and humanitarian law and related standards, and that the right to voluntary return in safety and dignity is recognized therein.

### **12. National Procedures, Institutions and Mechanisms**

- 12.1 States should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims. In cases where existing procedures, institutions and mechanisms can effectively address these issues, adequate financial, human and other resources should be made available to facilitate restitution in a just and timely manner.
- 12.2 States should ensure that housing, land and property restitution procedures, institutions and mechanisms are age and gender sensitive, and recognize the equal rights of men and women, as well as the equal rights of boys and girls, and reflect the overarching principle of the "best interests" of the child.
- 12.3 States should take all appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and property restitution process. States should provide all relevant agencies with adequate financial, human and other resources to successfully complete their work in a just and timely manner.

- 12.4 States should establish guidelines which ensure the effectiveness of all relevant housing, land and property restitution procedures, institutions and mechanisms, including guidelines pertaining to institutional organization, staff training and caseloads, investigation and complaints procedures, verification of property ownership or other possessory rights, as well as decision-making, enforcement and appeals mechanisms. States may integrate alternative or informal dispute resolution mechanisms into these processes, insofar as all such mechanisms act in accordance with international human rights, refugee and humanitarian law and related standards, including the right to non-discrimination.
- 12.5 States should, where there has been a general breakdown in the rule of law, or where States are unable to implement the procedures, institutions and mechanisms necessary to facilitate the housing, land and property restitution process in a just and timely manner, request the technical assistance and cooperation of relevant international agencies in order to establish provisional regimes responsible for providing refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective restitution remedies.
- 12.6 States should include housing, land and property restitution procedures, institutions and mechanisms in peace agreements and voluntary repatriation agreements. Peace agreements should include specific undertakings by the parties to appropriately address any housing, land and property issues that require remedies under international law or threaten to undermine the peace process if left unaddressed, while demonstrably prioritizing the right to restitution as the preferred remedy in this regard.
- 13. Accessibility of Restitution Claims Procedures**
- 13.1 Everyone who has been arbitrarily or unlawfully deprived of housing, land and/or property should be able to submit a claim for restitution and/or compensation to an independent and impartial body, and to receive a determination on their claim. States should not establish any pre-conditions for filing a restitution claim.
- 13.2 States should ensure that all aspects of the restitution claims process, including appeals procedures are just, timely, accessible, free of charge, and are age and gender sensitive. States should adopt positive measures to ensure that women are able to participate on a fully equal basis in this process.
- 13.3 States should ensure that separated and unaccompanied children are able to participate and are fully represented in the restitution claims process, and that any decision in relation to the restitution claim of separated and unaccompanied children is in compliance with the overarching principle of the “best interests” of the child.
- 13.4 States should ensure that the restitution claims process is accessible for refugees and other displaced persons regardless of their place of residence during the period of displacement, including in countries of origin, countries of asylum or countries to which they have fled. States should ensure that all affected persons are made aware of the restitution claims process, and that information about this process is made readily available, including in countries of origin, countries of asylum or countries to which they have fled.
- 13.5 States should seek to establish restitution claims processing centers and offices throughout affected areas where potential claimants currently reside. In order to facilitate the greatest access to those affected, it should be possible to submit restitution claims by post or by proxy, as well as in person. States should also consider establishing mobile units in order to ensure accessibility to all potential claimants.
- 13.6 States should ensure that users of housing, land and/or property, including tenants, have the right to participate in the restitution claims process, including through the filing of collective restitution claims.
- 13.7 States should develop restitution claims forms that are simple, easy to understand and use and make them available in the first language or languages of the groups affected. Competent assistance should be made available to help persons in completing and filing any necessary restitution claims forms, and such assistance should be provided in a manner which is age and gender sensitive.
- 13.8 Where restitution claims forms cannot be sufficiently simplified due to the complexities inherent in the claims process, States should engage qualified persons to interview potential claimants in confidence, and in a manner, which is age and gender sensitive, in order to solicit the necessary information and complete the restitution claims forms on their behalf.

13.9 States should establish a clear time period for filing restitution claims. The time period should be widely disseminated and should be sufficiently long to ensure that all those affected have an adequate opportunity to file a restitution claim, bearing in mind the number of potential claimants, potential difficulties of information and access, the spread of displacement, the accessibility of the process for potentially disadvantaged groups and vulnerable individuals, and the political situation in the country or region of origin.

13.10 States should ensure that persons needing special assistance, including illiterate and disabled persons, are provided with such assistance in order to ensure that they are not denied access to the restitution claims process.

13.11 States should ensure that adequate legal aid is provided, if possible free of charge, to those seeking to make a restitution claim. While legal aid may be provided by either governmental or non-governmental sources (be they national or international), such legal aid should meet adequate standards of quality, non-discrimination, fairness and impartiality so as not to prejudice the restitution claims process.

13.12 States should ensure that no one is persecuted or punished for making a restitution claim.

#### **14. Adequate Consultation and Participation in Decision-Making**

14.1 States and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution Programs are carried out with adequate consultation and participation with the affected persons, groups and communities.

14.2 States and other involved international and national actors should, in particular, ensure that women, Indigenous Peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including the elderly, single female heads of households, separated and unaccompanied children, and the disabled should be given particular attention.

#### **15. Housing, Land and Property Records and Documentation**

15.1 States should establish or re-establish national multi-purpose cadastre or other appropriate systems for the registration of housing, land and property rights as an integral component of any restitution Programs, respecting the rights of refugees and displaced persons when doing so.

15.2 States should ensure that any judicial, quasi-judicial, administrative or customary pronouncement regarding the rightful ownership of, or rights to, housing, land and/or property is accompanied by measures to ensure registration or demarcation of that housing, land and/or property right as is necessary to ensure legal security of tenure. These determinations shall comply with international human rights, refugee and humanitarian law and related standards, including the right to non-discrimination.

15.3 States should ensure, where appropriate, that registration systems record and/or recognize the possessory rights of traditional and Indigenous communities to collective lands.

15.4 States and other responsible authorities or institutions should ensure that existing registration systems are not destroyed in times of conflict or post-conflict. Measures to prevent the destruction of housing, land and property records could include protection in situ or, if necessary, short-term removal to a safe location or custody. If removed, the records should be returned as soon as possible after the end of hostilities. States and other responsible authorities may also consider establishing procedures for copying records (including in digital format) transferring them securely and recognizing the authenticity of said copies.

15.5 States and other responsible authorities or institutions should provide, at the request of a claimant or his or her proxy, copies of any documentary evidence in their possession required to make and/or support a restitution claim. Such documentary evidence should be provided free of charge, or for a minimal fee.

15.6 States and other responsible authorities or institutions conducting the registration of refugees or displaced persons should endeavour to collect information relevant to facilitating the restitution process, for example by including in the registration form questions regarding the location and status of the individual refugee's or displaced person's former home, land, property or place of habitual residence. Such information should be sought whenever information is gathered from refugees and displaced persons, including at the time of flight.

15.7 States may, in situations of mass displacement where little documentary evidence exists as to ownership or possessory rights, adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution. In such cases, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.

15.8 States shall not recognize as valid any housing, land and/or property transaction, including any transfer that was made under duress, or which was otherwise coerced or forced, either directly or indirectly, or which was carried out contrary to international human rights standards.

## **16. The Rights of Tenants and other Non-Owners**

16.1 States should ensure that the rights of tenants, social occupancy rights holders and other legitimate occupants or users of housing, land and property are recognized within restitution Programs. To the maximum extent possible, States should ensure that such persons are able to return to and re-possess and use their housing, land and property in a similar manner to those possessing formal ownership rights.

## **17. Secondary Occupants**

17.1 States should ensure that secondary occupants are protected against arbitrary or unlawful forced eviction. States shall ensure, in cases where evictions of such occupants are deemed justifiable and unavoidable for the purposes of housing, land and property restitution, that evictions are carried out in a manner which is compatible with international human rights law and standards, such that secondary occupants are afforded safeguards of due process, including, inter alia, an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress.

17.2 States should ensure that the safeguards of due process extended to secondary occupants do not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the housing, land and property in question in a just and timely manner.

17.3 States should, in cases where evictions of secondary occupants are justifiable and unavoidable, take positive measures to protect those who do not have the means to access any other adequate housing other than that which they are currently occupying from homelessness and other violations of their right to adequate housing. States should undertake to identify and provide alternative housing and/or land for such occupants, including on a temporary basis, as a means to facilitate the timely restitution of refugee and displaced persons housing, land and property. Lack of such alternatives, however, should not unnecessarily delay the implementation and enforcement of decisions by relevant bodies regarding housing, land and property restitution.

17.4 States may consider, in cases where housing, land and property has been sold by secondary occupants to third parties acting in good faith, establishing mechanisms to provide compensation to injured third parties. The egregiousness of the underlying displacement, however, may arguably give rise to constructive notice of the illegality of purchasing abandoned property, pre-empting the formation of bona fide property interests in such cases.



## **18. Legislative Measures**

- 18.1** States should ensure the right of refugees and displaced persons to housing, land and property restitution is recognized as an essential component of the rule of law. States should ensure the right to housing, land and property restitution through all necessary legislative means, including through the adoption, amendment, reform, or repeal of relevant laws, regulations and/or practices. States should develop a legal framework for protecting the right to housing, land and property restitution, which is clear, consistent and, where necessary, consolidated in a single law.
- 18.2** States should ensure that all relevant laws clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land and property, most notably refugees and displaced persons. Subsidiary claimants should similarly be recognized, including resident family members at the time of displacement, spouses, domestic partners, dependents, legal heirs and others who should be entitled to claim on the same basis as primary claimants.
- 18.3** States should ensure that national legislation related to housing, land and property restitution is internally consistent, as well as compatible with pre-existing relevant agreements, such as peace agreements and voluntary repatriation agreements, so long as these agreements are themselves compatible with international human rights, refugee and humanitarian law and related standards.

## **19. Prohibition of Arbitrary and Discriminatory Laws**

- 19.1** States should neither adopt nor apply laws which prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.
- 19.2** States should take immediate steps to repeal unjust or arbitrary laws, and laws which otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.
- 19.3** States should ensure that all national policies related to the right to housing, land and property restitution fully guarantee the rights of women and girls to non-discrimination and to equality in both law and practice.

## **20. Enforcement of Restitution Decisions and Judgments**

- 20.1** States should designate specific public agencies to be entrusted with enforcing housing, land and property restitution decisions and judgments.
- 20.2** States should ensure, through law and other appropriate means, that local and national authorities are legally obligated to respect, implement and enforce decisions and judgments made by relevant bodies regarding housing, land and property restitution.
- 20.3** States should adopt specific measures to prevent the public obstruction of enforcement of housing, land and property restitution decisions and judgments. Threats or attacks against officials and agencies carrying out restitution Programs should be fully investigated and prosecuted.
- 20.4** States should adopt specific measures to prevent the destruction or looting of contested or abandoned housing, land and property. In order to minimize destruction and looting, States should develop procedures to inventory the contents of claimed housing, land and property within the context of housing, land and property restitution Programs.
- 20.5** States should implement public information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of non-compliance with housing, land and property restitution decisions and judgments, including failing to vacate occupied housing, land and property voluntarily and damaging and/or looting of occupied housing, land and property.

## **21. Compensation**

- 21.1** All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only be used when the remedy of restitution is not factually possible or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.

21.2 States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.

## Section VI. The Role of the International Community, Including international Organizations

### 22. Responsibility of the International Community

22.1 The international community should promote and protect the right to housing, land and property restitution, as well as the right to voluntary return in safety and dignity.

22.2 International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition against unlawful or arbitrary displacement and, in particular, the prohibition under international human rights law and related standards on the practice of forced evictions.

22.3 International organizations should work with national governments and share expertise on the development of national housing, land and property restitution policies and Programs and help ensure their compatibility with international human rights, refugee and humanitarian law and related standards. International organizations should also support the monitoring of their implementation.

22.4 International organizations, including the United Nations, should strive to ensure that peace agreements and voluntary repatriation agreements contain provisions related to housing, land and property restitution, including through inter alia the establishment of national procedures, institutions, mechanisms and legal frameworks.

22.5 International peace operations, in pursuing their overall mandate, should help to maintain a secure and stable environment wherein appropriate housing, land and property restitution policies and Programs may be successfully implemented and enforced.

22.6 International peace operations, depending on the mission context, should be requested to support the protection of the right to housing, land and property restitution, including through the enforcement of restitution decisions and judgments. Member States in the Security Council should consider including this role in the mandate of peace operations.

22.7 International organizations and peace operations should avoid occupying, renting or purchasing housing, land and property over which the rights holder does not currently have access or control and should require that their staff do the same. Similarly, international organizations and peace operations should ensure that bodies or processes under their control or supervision do not obstruct, directly or indirectly, the restitution of housing, land and property.

## Section VII. Interpretation

### 23. Interpretation

23.1 The Principles on Housing and Property Restitution for Refugees and Displaced Persons shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights, refugee and humanitarian law and related standards, or rights consistent with these laws and standards as recognized under national law.

# ANNEX II

## GLOSSARY OF SPECIFIC TERMS USED IN THE HANDBOOK

<b>Diwan</b>	In the Yemeni and Iraq context, it is a sitting room – usually the largest one – in a house where locals gather to exchange points of views to address matters, circulate important messages and socialize.
<b>Ijtihad</b>	Personal reasoning or interpretation, a tool of Islamic jurisprudence; opposite of taqlid (following traditions scrupulously and without attempting to innovate).
<b>Mahr</b>	The payment of money from the husband to the wife at the time of marriage, known as dower.
<b>Mukhtar/ sheikh/aqil</b>	Leader of family, clan, village or community. In the Yemeni context, the word “Aqil” is used for appointed “government representative” in a local community usually a neighbourhood in the city or a village in the countryside. Minor or major tribal leaders are called sheikh in Yemen, a term that can also be used as a mark of respect for religious leaders. The same applies in Iraq regarding the term sheikh. Mukhtar is used for a person who is officially recognized by the government as a representative of a region or neighbourhood.
<b>Musha`à</b>	Agricultural land held/owned by the community (communal land)
<b>Mushawarat</b>	Consultative meetings/Deliberations
<b>Sharia</b>	Islamic law
<b>Sanayin/sawani</b>	Sets of tribal codes in Iraq adopted by tribal sheikhs. The codes constitute the customs to guide relations among members of a tribe and among tribes.
<b>Sannad borrani</b>	A document of admittance (formal or informal) that a person owes a sum of money or property (movable or immovable assets) to another person, which is authenticated either by a fingerprint or in the presence of one or more witnesses. In Iraq, the document is called a trust receipt (cambial) with the same conditions.
<b>Tapu/tabu/ tapoo</b>	An Ottoman land title registration office or document, still referred to as such for example in the Occupied Palestinian territory and Israel. It is also a title deed granting usufruct rights in State land (miri). In the Yemeni, Occupied Palestinian Territory and Iraqi context, it is called “al-sijel al-`aqari” which means the cadastral registry.
<b>Urf</b>	Custom and usage, a general or local model of behaviour, social understanding, or mode of expression that is generally accepted by the population and does not contract a definitive rule of Islamic law (Sharia)
<b>Waqf/habous</b>	General term for charitable endowment, also habous in North Africa. In the Yemeni context, “waqf” is used for two types of endowed property. The first one is for the benefit of oneself or one’s offspring by which the heirs cannot sell the property whereas the second one is for common or private charity purposes, such as for mosque maintenance and services or for the benefit of a specific person.



**International Organization for  
Migration (IOM)**  
**Regional Office for Middle East and  
North Africa**  
**Website:** <https://mena.iom.int/>

**Office of the United Nations  
High Commissioner for Human Rights (OHCHR)**  
**Regional Office of the Middle East and North Africa**  
UN House, P.O. Box 11-8575, Riad El Solh 1107-2812, Beirut, Lebanon  
**Website:** <https://romena.ohchr.org/en>

**Food and Agriculture Organization of the  
United Nations (FAO)**  
**Regional Office for Near East and North Africa  
c/o Headquarters**  
Viale delle Terme di Caracalla  
00153 Rome, Italy  
**Website:** [www.fao.org/neareast/en](http://www.fao.org/neareast/en)

**United Nations Human  
Settlements Programme  
(UN-Habitat)**  
P.O. Box 30030-00100  
Nairobi, Kenya  
**Website:** [https://unhabitat.org/  
roas-un-habitat-in-the-arab-region](https://unhabitat.org/roas-un-habitat-in-the-arab-region)

**Norwegian Refugee Council (NRC)**  
**The Internal Displacement Monitoring  
Centre of the Norwegian Refugee Council**  
Prinsens gate 2  
0152 Oslo  
Norway  
**Website:** [www.nrc.no/](http://www.nrc.no/)