



The Pinheiro Principles

United Nations Principles on Housing and Property Restitution
for Refugees and Displaced Persons



Centre on Housing Rights and Evictions
www.cohre.org

Principle 2: All refugees and displaced persons have the right to have restored to them any housing, land or property of which they were arbitrarily or unlawfully deprived...

- The Pinheiro Principles

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AN INTRODUCTION TO ‘THE PINHEIRO PRINCIPLES’

This booklet contains the full text of an important new international standard which outlines the rights of refugees and displaced persons to return not only to their countries when they see fit to do so, but to their original homes and lands as well. The Pinheiro Principles are the culmination of more than a decade of international and local activities in support of the emerging right to housing and property restitution as a core remedy to displacement.

Though few experiences can be more harrowing than being forced by circumstance or design from one's home, every year many millions of people are left with no other option than fleeing their homes, lands and properties against their will. Whether caused by armed conflict, genocide, 'ethnic cleansing' or large-scale violations of housing, land and property rights carried out by governments, rebel groups or others, displacement is always nasty, always brutish, but all too rarely is it short.

Official statistics now point to more than 12 million refugees worldwide, with an additional 25 million internally displaced persons (IDPs) dispersed in camps, slums and temporary shelters within the borders of their own countries. This group of some 37 million people, however, is only part of the displacement dynamic facing the world today. If we add to this total those forced from their homes by politically-motivated forced evictions, development-induced displacement, natural disasters or other means, the actual number of the world's displaced is probably closer to 50-60 million, if not considerably more.

Some of the most serious problems facing displaced people around the globe are the loss of land, housing and property rights during their displacement and the consequent inability to return to their original homes and lands once they choose to voluntarily repatriate. For virtually all of the world's displaced, their main wish is to return to their original homes in safety and dignity.

These issues are at the centre of the entire restitution equation; whatever its cause, displacement must always be treated as a phenomenon in need of remedy and redress when those forced from their places of habitual residence determine the time is right. The process of housing and property restitution provides this remedy within a legally sound, coherent and practical framework which should bring displacement – and often its causes – to a permanent, sustainable and just end.

People displaced by forces beyond their control should never face the prospect of losing their housing, land or property rights simply because they were violently forced to leave or otherwise fled an insecure situation in search of protection. And even when actual return and repossession is not considered safe, desirable or possible by the displaced themselves (for instance, when refugees choose to seek asylum, resettlement and permanent residence in a safe third country), few displaced persons willingly renounce their rights to the places they called home before fleeing, even if they have no intention of actually returning. Nor should they have to.

And yet, housing, land and property disputes between the displaced and those currently living without their consent in their homes (the process of secondary occupation), inadequate legal protection and remedies for returnees and a range of other problems often act as strong impediments to the exercise of the right to return and related rights to housing and property restitution. Consequently, millions of refugees and displaced persons who desperately want to return to their original homes are unable to do so because restitution rights are not treated with due seriousness by the relevant authorities and international actors in the countries concerned.

Ultimately, the concept of restitution provides a source of hope and a wellspring of potential justice. Restitution offers the displaced the promise that a history of injustice, the abuse of basic rights, or terror and harassment can actually, at least in this one important respect, be reversed. In what must be seen, then, as a major advance within the global human rights code, this aspiration to recover and repossess the dwelling, land or property the displaced called home when their displacement began, has emerged in recent years as a distinct and claimable right applicable to all displaced persons who wish to invoke it. The broader right to voluntary, safe and dignified return is now understood to encompass not merely returning to one's country of origin, but to one's original home as well. This is one reason, for instance, why UNHCR and other international and national agencies are now paying greater attention to the restitution elements of return than ever before.

From General Concepts and National Laws to a Comprehensive Global Standard

Housing, land and property restitution rights for refugees and displaced persons are firmly grounded within the core principles of many fields of international law. As a legal concept, of course, restitution has been treated as a central (and often preferred) remedy for violations of legal obligations within many jurisdictions for more than a century. Innumerable United Nations Security Council and General Assembly resolutions adopted over the past 60 years explicitly address housing and property restitution rights. In recent decades, a range of international human rights bodies and national institutions have reaffirmed the right of all refugees and IDPs to return freely to their countries and to have restored to them housing and property of which they were deprived, or to be compensated for property that cannot be restored to them. The recognition throughout the international community of the direct links between housing, land and property restitution and peace, stability, reconciliation and economic development have bolstered support for the human rights remedies offered to the displaced by restitution rights, which are now widely viewed as key elements of any constructive peace-building strategy.

In recent decades, in post-conflict contexts such as Bosnia-Herzegovina, Kosovo and Tajikistan; in post-authoritarian countries like South Africa or Iraq; and in post-communist countries including East Germany, Latvia and Albania, restitution rights have been recognised, and laws and procedures developed and enforced. In the process millions of displaced people have been able to return to repossess and reinhabit their original homes, lands and properties. While many factors may account for the emergence of these new global standards on housing and property restitution rights, perhaps the convergence of national-level restitution programmes, combined with a widening global awareness of the plight of those who have thus far been left behind in the pursuit of restitution rights, were the key driving forces behind the adoption of the Pinheiro Principles in August 2005.

The actual process within the United Nations leading up to what finally became the Pinheiro Principles was initiated in 1997 when the Committee on the Elimination of Racial Discrimination (CERD) proposed to the Sub-Commission on the Promotion and Protection of Human Rights (the body that subsequently endorsed the Principles) to study “the return of refugees’ or displaced persons’ property.” In the following year, the Sub-Commission made its first foray into the area of restitution rights, and adopted resolution 1998/26 on Housing and Property Restitution in the Context of the Return of Rights for Refugees and Internally Displaced Persons, effectively signaling the Sub-Commission’s serious attention to the restitution issue as a fundamental human rights concern. In 1999, the UN Commission on Human Rights encouraged the Sub-Commission to continue its work on housing and property restitution in the context of the return of refugees and IDPs. In 2001, the Sub-Commission brought the process one step further and requested Sub-Commission expert, Paulo Sérgio Pinheiro, of Brazil, to prepare a working paper on the topic.

After appointing Pinheiro as Special Rapporteur on Housing and Property Restitution for Refugees and Internally Displaced Persons in 2002, and then considering his preliminary study in 2003, the Sub-Commission asked the Special Rapporteur to prepare draft principles or guidelines on housing and property restitution based on the initial conclusions of the preliminary study. In 2004, Pinheiro presented a preliminary set of principles to the Sub-Commission for consideration and review. After providing detailed inputs, the Sub-Commission then requested him to present a final draft of the text in August 2005. Following an intensive series of consultations with legal experts, UN agencies, States and civil society groups during the intervening year, the final text was presented to the Sub-Commission and formally endorsed on 11 August 2005.

The Pinheiro principles are designed to provide practical guidance to States, UN agencies and the broader international community on how best to address the complex legal and technical issues surrounding housing, land and property restitution. For the first time, the Principles provide a consolidated and universal approach to dealing effectively with outstanding housing and property restitution claims. They augment the international normative framework in the area of housing and property restitution rights, and are grounded firmly within existing international human rights and humanitarian law.

Sections II-IV of the Principles (Principles 2-10) re-affirm existing human rights and apply them to the specific question of housing and property restitution. National policy-makers, UN and NGO officials and others involved in the practical transformation of restitution rights from paper to deed, will find Sections V-VI (Principles 11-22) of particular relevance. In these sections, the Principles elaborate what States should do in terms of developing national housing and property restitution procedures and institutions, and ensuring access to these by all displaced persons. They stress the importance of consultation and participation in decision-making by displaced persons, and then outline approaches to technical issues of housing, land and property records,

the rights of tenants and other non-owners and the question of secondary occupants. Legislative measures, the prohibition of arbitrary and discriminatory laws, the enforcement of restitution decisions and judgments and the issue of compensation are then explored. Finally, Principle 22 discusses the responsibility of the international community to protect housing and property restitution rights.

COHRE will be carrying out an extensive series of promotional, training, legal advocacy, litigation and support activities in the near future based on The Pinheiro Principles, and looks forward to continuing to work together with our partners throughout the world to bring the promise of restitution rights to refugees and displaced persons everywhere. COHRE would like to express its deep appreciation to the Royal Ministry of Foreign Affairs (Norway), the Foreign and Commonwealth Office (United Kingdom), the UN High Commissioner for Refugees (UNHCR), the Office of Humanitarian Coordination and Assistance (OCHA) - Internal Displacement Division (IDD), Cordaid and the Norwegian Refugee Council for their generous support for COHRE's work on housing and property restitution rights.

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UNITED NATIONS PRINCIPLES ON HOUSING AND PROPERTY RESTITUTION FOR REFUGEES AND DISPLACED PERSONS
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 programmes, 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 programmes, as a key element of restorative justice, contributes to effectively deterring future situations of displacement and building sustainable peace.



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.

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 prioritize 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.

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.

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.

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 recognize 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.

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.

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 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.

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.

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.

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.



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.

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.

SECTION IV.

THE RIGHT TO 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 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

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 recognized therein.

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 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 that 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 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 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.

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 notice of such determination. States should not establish any preconditions 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 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.



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.

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 recognize 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 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 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 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.



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 recognized 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.



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 that 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.

Principle 18.

Legislative measures

18.1 States should ensure that 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.



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.



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 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 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 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 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 judgments, including failing to vacate occupied housing, land and property voluntarily and damaging and/or looting of occupied housing, land and property.

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.

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 organizations 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 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 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.

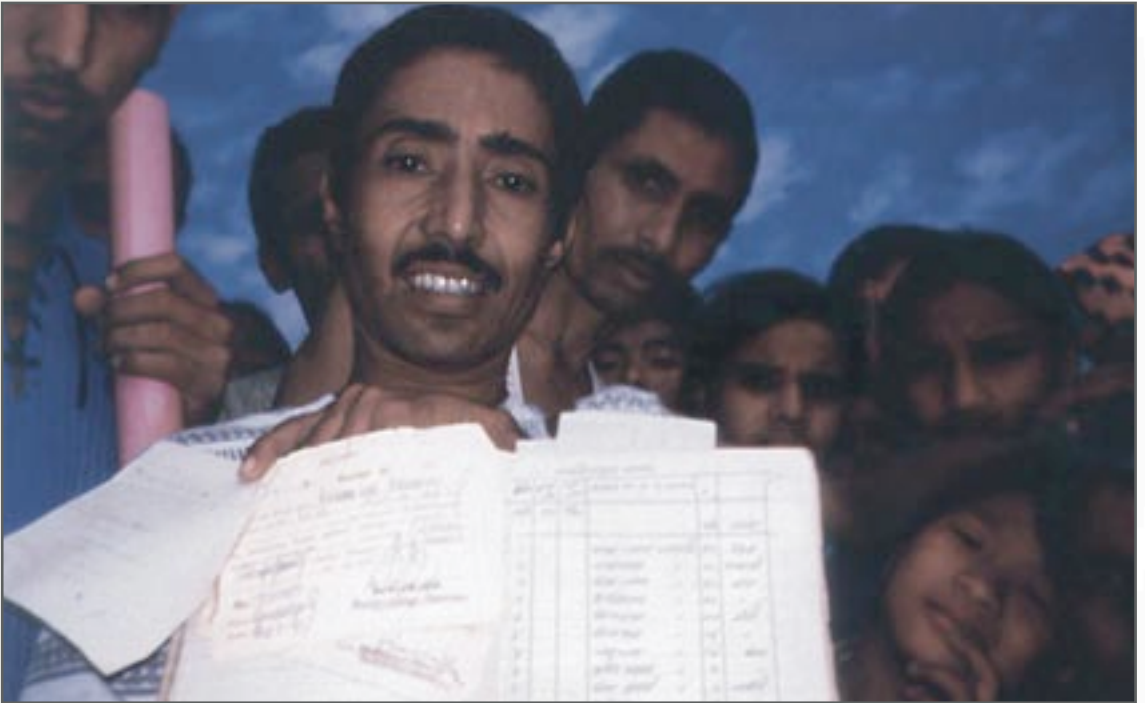
22.6 International peace operations, depending on the mission context, should be requested to support the protection of the right to housing, land and property restitution, including through the enforcement of restitution decisions and judgments. Members of the Security Council should consider including 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

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 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.



APPLYING THE PINHEIRO PRINCIPLES: SELECTED UNRESOLVED RESTITUTION CASES

Millions of refugees and displaced persons are currently struggling to exercise their rights to housing and property restitution, but are actively prevented from doing so. In some cases, Governments very consciously and explicitly prevent return and restitution by annulling property titles, adopting new laws designed to quash restitution claims and by placing citizens (often from other ethnic, religious and other groups favoured by those in power) within the homes and upon the lands from which refugees and displaced persons fled. In other instances, such as unresolved or still active territorial and other conflicts, the lack of economic options available in areas of potential return or lingering security concerns may be responsible.

The following cases illustrate just how extensive the problem of unresolved restitution claims is throughout the world, and provide examples of situations where applying the Pinheiro Principles may provide a constructive means of facilitating their just resolution.

Afghanistan

Ongoing land disputes, illegal land confiscations of returnee lands, unclear ownership rights, dual legal systems (customary and modern), landlessness, land shortages, discrimination against women, and the prevailing lack of effective restitution procedures have left hundreds of thousands of returnees unable to return to their original lands.

Azerbaijan

More than 525,000 ethnic Azeri IDPs, forced to flee their homes and lands during the 1992-1994 conflict over Nagorno-Karabakh, remain displaced. A further 200,000 ethnic Azeris who fled Armenia have been offered naturalization within Azerbaijan. Both groups retain as yet unresolved housing and property restitution claims to their original homes.

Bhutan

Some 105,000 Bhutanese refugees have lived for almost two decades in refugee camps in eastern Nepal. Many were arbitrarily stripped of their nationality prior to their expulsion from Bhutan. The Government of Bhutan refuses to allow the refugees to return to their original homes, and recent reports indicate that many refugee homes and lands have been allocated by the Government to secondary occupants.

Burundi

More than 200,000 IDPs are dispersed throughout Burundi, while 100,000 refugees have returned to the country since 2003, primarily from neighbouring Tanzania. The large-scale returns, combined with the large number of IDPs, have led to dramatic increases in the price of land, land disputes and related tensions which have prevented the exercise of housing and property restitution rights.

Colombia

Some 3 million persons have become internally displaced in Colombia due to the ongoing armed conflict between Government armed forces, left-wing guerrilla groups, and right-wing paramilitary organizations. Another 250,000 have fled to nearby Ecuador, Venezuela and Panama. Colombia's displaced often reside in the informal slums and shantytowns which surround many of Colombia's major cities – most notably Bogotá, Medellín, Cali and Cartagena.

Croatia

More than 100,000 ethnic Serb refugees are unable to return to their original homes in Croatia due to a combination of unwillingness by the authorities in Croatia to remove secondary occupiers from refugee homes and legislation that effectively excludes Serbs from accessing Government housing repair programmes, despite the fact that thousands of Serb homes were damaged or destroyed as a result of the conflict in the 1990s.

Cyprus

The Turkish invasion of Cyprus in 1974 led to the forced displacement of more than 170,000 Greek Cypriots from the northern part of the island to the South, while a smaller number of Turkish Cypriots, some 45,000, fled northwards. Vocal demands for the restitution of housing and property have ensured that this remains a major political issue in the country. Many analysts view the proposed arrangements within the draft peace accords addressing these restitution claims as a key reason for the massive rejection of the peace plan in the 2004 referendum.

DR Congo

Though as many as 700,000 IDPs may have returned to their areas of origin in recent years, DR Congo still has one of the world's largest internally displaced populations with over 1.5 million IDPs living in extremely poor conditions. Dual land systems, inability to access courts to recover property and the occupation of IDP land by secondary occupants continue to prevent sustained return and restitution.

Iraq

Some 37,000 housing and property restitution claims from those displaced between 1968-2003 have been submitted to the Iraq Property Claims Commission (IPCC). The vast majority of claimants are Kurds from northern Iraq (75%), with additional claims submitted by Turkmen and Arab minorities. According to various reports, however, the IPCC has been hampered by understaffing and lack of resources. Of the claims submitted thus far, only 600 cases have been adjudicated and over 150 appeals have been filed.

Kosovo (UNMIK/Serbia & Montenegro)

Although the Housing and Property Directorate in Kosovo, which is administered by the UN Mission in Kosovo, has issued decisions on some 28,000 of the 29,000 restitution claims it has received, with 40% of these decisions already implemented, more than 200,000 Kosovar Serbs remain displaced within so-called safe enclaves in Kosovo, or in Serbia & Montenegro. Thousands of Kosovo's Roma community remain displaced throughout the region, often forced to live in appalling conditions in slums and municipal waste dumps.

Liberia

Up to 500,000 IDPs within Liberia continue to live in poor conditions in camps, squatter settlements and remote areas throughout the country. Despite the 2003 peace agreement, many displaced are prevented from returning home due to land disputes, unequal access by women to inheritance rights, the lack of housing in their areas of origin, continuing insecurity, instability and the lack of economic opportunities.

Myanmar (Burma)

Nearly 500,000 refugees from Myanmar (Burma) continue to reside in border camps and in urban areas in Thailand. An additional 1,000,000 IDPs are estimated to remain displaced within the country. Forced relocations carried out by Government troops have particularly targeted the various ethnic groups in the East and South of the country. Land confiscations, the intentional destruction of villages and the denial of customary land rights have all contributed to the displacement crisis in the country.

Palestine (Israel)

In what is by far the world's largest unresolved housing, land and property restitution problem, some five million Palestinian refugees retain valid restitution claims over their original homes and lands from which they have been expelled since 1948. These rights have been repeatedly re-affirmed by UN Security Council and General Assembly resolutions. Virtually all Palestinian refugees still possess title deeds, keys, photographs and other documentary evidence proving their rights to their original homes. Similar information is kept on file at the UN Headquarters in New York. Many experts agree that there can be no prospect of a workable peace agreement between Israel and the Palestinians until all outstanding housing and property restitution issues are properly addressed.

Sri Lanka

More than two decades of civil war in Sri Lanka between Government forces and the Liberation Tigers of Tamil Eelam have led to large-scale displacement, with some 350,000 conflict IDPs still unable to return home. Detailed proposals for the establishment of a housing and land commission to resolve outstanding restitution claims of the displaced are currently under consideration by the parties to the conflict.

Sudan

The conflict ravaging Sudan has generated the world's largest internally displaced population and has created what the UN has called the worst humanitarian situation in the world. An estimated six million people have fled their homes to escape fighting between Government troops, the Sudan People's Liberation Army and several smaller militia groups aligned with the Government. The crisis in Darfur alone has resulted in the deaths of at least 50,000 people, and left some 1.6 million left homeless. Despite a peace agreement ending the conflict in southern Sudan, the lack of restitution mechanisms, emerging land disputes, discrimination against women and non-recognition of customary rights are all preventing many returnees from returning to their original homes and lands.

Tibet (China)

Approximately 100,000 Tibetan refugees reside in towns and settlements throughout India, while a further 25,000 refugees live in exile in Nepal. Though the immediate likelihood of return to Tibet by the refugees is remote, the refugees retain housing and property restitution rights to their former homes and lands in areas now under Chinese jurisdiction, which they were forced to flee since 1959.

Tsunami-Affected Nations in South and Southeast Asia

In Sri Lanka the devastating tsunami of 26 December 2004 destroyed 80,000 homes and displaced one million people. Almost a year later, as many as 500,000 remain displaced. In Indonesia, the tsunami displaced over 500,000 people in Aceh, while in India, 150,000 people were left homeless. Thousands more were similarly affected in Thailand, the Maldives, Myanmar (Burma) and elsewhere. The Pinheiro Principles are applicable in this and other post-disaster contexts and may be used to support the rights of the displaced to voluntarily return to the land on which they originally lived.

Turkey

Two million (or more) Kurds who were forcibly relocated or who otherwise fled the violent conflict in Kurdish areas of the country during the 1980s and 1990s, remain internally displaced within Turkey. Despite numerous judgments by the European Court on Human Rights seeking to enforce the housing and property rights of the displaced, most have not been able to return to their original homes and lands due to severe restrictions imposed by local military officials, the occupation of IDP lands by 'village guards' and general fear of discrimination and insecurity.

Uganda

More than 1,300,000 IDPs are now sheltering in some 200 camps, villages and cities throughout Uganda, fleeing fighting between the Ugandan Army and rebels of the Lord's Resistance Army. Until the conflict ends, the prospects for sustained return and restitution remain distant.

Western Sahara

Nearly 100,000 refugees from Western Sahara are confined to four camps in Algeria. Displaced for three decades, the refugees continue to retain restitution claims to their former homes, lands and properties which will not likely be resolved until a permanent peace settlement between Western Sahara and Morocco is reached.



Only by dealing upfront with restitution can wars and conflicts come to a permanent end.

- Theo Van Boven ¹

¹ From the foreword to *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*, (Scott Leckie, ed), Transnational Publishers, 2003.

The Centre on Housing Rights and Evictions (COHRE) is an independent and international non-governmental, not-for-profit human rights organisation. COHRE is an NGO with Special Consultative status to the Economic and Social Council of the United Nations (ECOSOC), the Organisation of American States, observer status with the African Commission on Human and People's Rights and participatory status with the Council of Europe.

COHRE is registered as a not-for-profit foundation or *Stichting* in the Netherlands (No. 41186752) and in the United States as a 501(c)(3) not-for-profit organisation. COHRE is also registered in Australia, Brazil and Ghana.

COHRE's International Secretariat is based in Geneva, Switzerland, from where it oversees COHRE's global housing rights campaigns and manages its regional and thematic programmes. Regional programmes currently cover Africa, the Americas and the Asia-Pacific region, while thematic programmes focus on Women and Housing Rights, Forced Evictions, Litigation, the Right to Water, and Housing and Property Restitution.

COHRE's Housing and Property Restitution Programme

Since 1998 COHRE's Housing and Property Restitution Programme (HPRP) has worked closely with governments, UN bodies, NGOs, community-based groups and refugees and IDPs to systematically address the immense housing, land and property restitution challenges facing refugees and IDPs in numerous post-conflict and post-disaster settings. Three key activities define the HPRP's work:

Promoting Restitution - The HPRP has designed laws, mechanisms, institutions and programmes to support restitution claims by displaced persons in Albania, Georgia, Iraq, Kosovo, Sri Lanka, and Timor Leste. Additional restitution efforts have been carried out in or concerning Bhutan, Guatemala, the Maldives, Myanmar (Burma), Palestine/Israel and Serbia & Montenegro. COHRE is regularly called on by UNHCR, UN-Habitat, UNDP, OCHA and other UN agencies for policy and legal advice on restitution issues.

Research - The HPRP has produced more than ten publications, including *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*, published by Transnational Publishers in 2003. Volumes 2 and 3 of *Returning Home* will be published by Transnational and Cambridge University Press, respectively. The HPRP recently completed a Proposed New UN Institutional and Policy Framework on Housing, Land and Property Rights in Post-Conflict Societies. A comparative survey of UN peace operations and their involvement in housing, land and property rights issues will be published in 2007.

Training - The HPRP regularly provides in-depth and practical training on housing and property restitution issues to refugee and IDP groups, NGOs and government officials.

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