

New housing, land and property restitution rights

by Scott Leckie

The UN's Pinheiro Principles represent the first consolidated global standard on the housing, land and property restitution rights of displaced people.

“The best solution to the plight of millions of refugees and displaced persons around the world is to ensure they attain the right to return freely to their countries and to have restored to them housing and property of which they were deprived during the course of displacement, or to be compensated for any property that cannot be restored to them. It is the most desired, sustainable, and dignified solution to displacement”.

Paulo Sergio Pinheiro, UN Special Rapporteur on Housing and Property Restitution

Few experiences are more harrowing than being forced 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. Whatever the cause, displacement is always nasty, always brutish, but all too rarely is it short. Millions of refugees and IDPs who desperately want to return to their original homes are unable to do so because restitution rights are not treated with due seriousness by relevant authorities and international actors.

Until comparatively recently, the land, homes and other possessions of the 'losers' of an armed conflict were widely regarded as part of the 'spoils of war' by the victors. Although the laws of armed conflict expressly prohibit the arbitrary destruction and expropriation of property, the right to restitution for people who have had to leave their homes was largely ignored in practice. Governments and humanitarian agencies alike concentrated their efforts on finding alternative shelter, and

addressing the immediate needs of refugees and the displaced.

The restitution of housing, land and property, however, is rising rapidly up the policy agenda. 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 re-inhabit 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.

After years of discussion - and input from experts involved in property restitution programmes in such places as Kosovo and Guatemala - the Pinheiro Principles were formally endorsed by the UN Sub-Commission on the Promotion and Protection of Human Rights on 11 August 2005. They provide practical guidance to governments, UN agencies and the broader international community on how best to address the complex legal and technical issues surrounding housing, land and property restitution. 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. They re-affirm existing human rights and apply them to the specific question of housing and property restitution. They 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 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.

Applying the Pinheiro Principles

The following cases illustrate how extensive the problem of unresolved restitution claims is 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 home.

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. They, and a further 200,000 ethnic Azeris who fled Armenia who have been offered naturalisation within Azerbaijan, still have unresolved housing and property restitution claims.

Bhutan: For two decades some 105,000 Bhutanese refugees have lived in refugee camps in eastern Nepal. Many were arbitrarily



A family sifts through the rubble of their tsunami-devastated home, Galle, Sri Lanka.

stripped of their nationality prior to their expulsion from Bhutan and recent reports indicate that many refugee homes and lands have been officially allocated to secondary occupants.

Burundi: More than 200,000 IDPs and the return of 100,000 refugees have led to dramatic increases in land prices, land disputes and tensions which have prevented the exercise of housing and property restitution rights.

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 exclusion of Serbs from government housing repair programmes.

Cyprus: Many analysts believe the failure to include mechanisms for restitution of housing and property seized in 1974 led to the Greek rejection of the UN-brokered Cyprus peace plan in 2004.

DR Congo: Dual land systems, inability to access courts to recover property and the occupation of IDP land by secondary occupants continue to prevent sustained return of one of the world's biggest IDP populations.

Iraq: Some 37,000 housing and property restitution claims from those displaced between 1968 and 2003 have been submitted to the Iraq Property Claims Commission (IPCC). The IPCC is under-staffed and under-resourced and has only ruled on 600 cases.

Kosovo: The Housing and Property Directorate in Kosovo, administered by the UN Mission in Kosovo, has issued decisions on almost all restitution claims. However, more than 200,000 Kosovar Serbs remain displaced in Kosovo or in Serbia and Montenegro and thousands of Roma remain displaced and living in appalling conditions.

Liberia: Despite the 2003 peace agreement, many of Liberia's half a million IDPs are prevented from returning home due to land disputes, unequal access by women to inheritance rights and lack of housing in their areas of origin.

Burma (Myanmar): Land confiscations, the intentional destruction of villages and the denial of customary land rights have contributed to the displacement of a million IDPs and around half a million refugees.

Palestine: 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 evidence proving their housing rights. Many argue that there can be no prospect of a workable peace until outstanding housing and property restitution issues are addressed.

Sri Lanka: Some 350,000 IDPs are still unable to return home as proposals to establish a commission to resolve restitution claims continue to be discussed.

Sudan: The North-South peace agreement is being implemented but the lack of restitution mechanisms, emerging land disputes, discrimination against women and non-recognition of customary rights are preventing many returnees from returning to their original homes and lands.

Tibet: Some 125,000 refugees in India and Nepal retain housing and property restitution rights to their former homes and lands in areas under Chinese jurisdiction since 1959.

Turkey: At least two million Kurds who were forcibly relocated or fled violent conflict in eastern Turkey remain internally displaced. Despite numerous judgments in their favour by the European Court on Human Rights, most have not been able to return to their original homes and lands.

Western Sahara: After three decades of displacement in camps in Algeria, over 100,000 Sahrawis continue to retain restitution claims to their former homes, lands and properties.

The Centre on Housing Rights and Evictions (COHRE) worked with the Watson Institute for International Studies at Brown University – with financial support from UNHCR and the Norwegian Refugee Council – to coordinate the review process which led to formal adoption of the Pinheiro Principles. COHRE is carrying out an extensive series of promotional, training and legal advocacy activities based on the framework provided by the Principles. We look 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.

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