

# Land and Property



## Key message

Forced displacement often leads to the loss of land, homes and other property with serious consequences for individuals and communities, who as a result are deprived of their main source of physical and economic security. Disputes over land and other property are frequently among the root causes of conflict and displacement and can pose obstacles to return, reintegration and reconciliation. It is important that efforts to address deprivation of land and property form part of the protection response during all stages of displacement.

The **UN Principles on Housing and Property Restitution for Refugees and Displaced Persons** (*Pinheiro Principles*), together with the **Handbook on Implementing the Pinheiro Principles**, provide important and practical guidance to all those working on housing and property restitution issues. They are available online at [www.refworld.org](http://www.refworld.org).

## 1. Loss of property in situations of internal displacement

Forced displacement can be a cause as well as a consequence of deprivation of land, homes and other property. People are often forced to leave behind valuable land and other property when they flee and seek safety from the effects of armed conflict, human rights abuses and other events. In many cases such property is subsequently damaged or destroyed by fighting or appropriated by parties to a conflict or other persons, who themselves may be displaced.

Deprivation of property can also form part of a deliberate political or military strategy, in effect a weapon of war, aimed at terrorizing, punishing and displacing particular communities and altering the ethnic or religious character of a country, in whole or in part. Disputes over land and property also are frequently among the root causes of conflict and displacement in many countries and as a result are often highly complex and difficult to solve.

Property can also be lost during forced return or relocation and other forced population movement while in displacement. Such events, which effectively amount to secondary displacement, often take place as part of or under the cover of land reform, agricultural restructuring or urban planning.

Loss of land and property can have serious consequences for the lives, health and well-being of individuals and communities and expose them to various risks. Without access to land, homes and property people are often deprived of their main source of physical and socio-economic security, including shelter, water, and food as well as the ability to earn a sustainable livelihood.

### What do we mean by the term property?

The term property is considered to refer to both tangible and intangible property, including land, homes, money, crops and livestock. Rights to property are not limited to private ownership but include a range of formal and/or informal rights and entitlements relating to access to, use of, control over and/or transfer of property.

Property rights can stem from diverse sources, including not only national law, but also customary or religious law or practice, and local tradition or custom. They can also be acquired over time through consistent use and practice. Such rights can be held privately, for instance by an individual, or collectively, for instance by a family, a social group, or a community.

Lack of a home or a fixed residence can also restrict people's access to assistance and services, including education and health care, and limit their access to credit. As a result, displaced persons may suffer increased poverty, marginalization and risk of harassment, exploitation and abuse.

Women and children often suffer disproportionately from loss of land, homes and property. Discriminatory laws and practices frequently prevent women and girls from owning, leasing, renting and/or inheriting property. In case of divorce or the death of husbands, fathers or other male relatives, women and girls may be forced to leave their homes, coerced into marriage, or subjected to other harmful practices.

During displacement, which often results in the separation of families and a surge in the number of women-headed households, such discrimination might make it impossible for displaced women or girls to reclaim or repossess their homes. Lack of shelter and limited access to land and sustainable livelihoods can also heighten their exposure to specific risks, such as rape, forced prostitution or trafficking.

Many of the factors that lead to deprivation of property to begin with are likely to pose obstacles to sustainable return and reintegration. The table below lists many of the factors that may need to be assessed and taken into account when developing and implementing strategies to prevent and/or respond to deprivation of property.

**Table 1: Factors that can impact efforts to prevent and respond to deprivation of property**

Type	Factors
Physical factors	<ul style="list-style-type: none"> <li>• <b>Lack of safety and security</b> in areas of origin due to ongoing violence and/or the presence of landmines or unexploded ordnances on land and roads/paths.</li> <li>• <b>Secondary occupation</b> of land and homes, for instance by other displaced persons or combatants or members of rival ethnic, national or religious groups.</li> <li>• <b>Damage and/or destruction</b> of land, housing and property, often combined with lack of available material, tools and expertise for repair and reconstruction. Disputes over boundaries of land might arise upon return, particularly when landmarks have been destroyed or removed.</li> </ul>
Political/Economic factors	<ul style="list-style-type: none"> <li>• <b>Ongoing conflict and tension</b> over land and other resources and/or resistance to fair restitution to displaced individuals and communities.</li> <li>• <b>Privatization or re-allocation</b> of socially or publicly-owned land or housing immediately prior to, during or after cessation of conflict, without regard to existing ownership, tenancy or occupancy rights. Such practices are often used to secure political support, consolidate ethnic cleansing, or gain financial profit, for instance by allocating land to large business corporations. They may also be part of structural adjustment and other development aid programmes. Privatisation and re-allocation programmes often discriminate against women, minority groups and indigenous peoples. As an example, informal titles and the rights of women and girls are often ignored during privatization and establishment of formal title.</li> <li>• <b>Sharp increase or decrease in value</b> of land, housing and property, making fair restitution and/or compensation difficult to achieve or subject to abuse. For instance, compensation based on pre-conflict prices might not be sufficient to acquire land or housing elsewhere.</li> </ul>
Legal factors	<ul style="list-style-type: none"> <li>• <b>Discriminatory laws, rules and regulations</b> that target certain ethnic or religious groups and restrict their ability to reclaim lost property.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Gender or age discrimination</b> rooted in discriminatory laws or cultural beliefs and practices that prevent women from owning, inheriting, controlling or making use of property, including upon divorce or upon the death of their husbands, fathers or other male relatives.</li> <li>• Inappropriate use of <b>abandonment laws and regulations</b>, resulting in seizure of vacated property after certain, often short, periods of time. Such laws have been abused to punish people for fleeing or to prevent people of certain ethnic, religious or other groups from returning and reclaiming property, thus consolidating practices of deliberate displacement or ethnic cleansing. Where abandonment, regardless of its duration, is the result of armed conflict, violence, discrimination or other violations of rights, it should not be held against the owner or result in loss of rights.</li> <li>• <b>Forced or fraudulent housing sales or rental “contracts”</b> made under duress prior to or at the time of flight, often without substantial or real compensation.</li> <li>• <b>Existence of complex and parallel systems of ownership/tenure</b>, based on different sources such as law, custom, tradition, or religion. These can take different forms, ranging from legal title or tenancy/occupancy rights in socially-owned properties, to permanent or temporary user rights in extended family-, collectively- or traditionally-owned properties.</li> </ul>
<p><b>Institutional/ administrative factors</b></p>	<ul style="list-style-type: none"> <li>• <b>Lack of documentation</b> and/or <b>lack or destruction of cadastral or other title records</b>. In some cases, people might never have possessed documents attesting to title or tenancy rights or these might have been destroyed, lost or confiscated in the course of displacement.</li> <li>• <b>Lack of resources to pursue property claims</b>, including lack of financial, legal and social support for individuals to pursue their legal claims, particularly women and children who face discriminatory property legislation.</li> <li>• <b>Lack of expertise, capacity and/or capability</b>, for instance due to corruption, within central and local state institutions, including courts, tribunals or other dispute resolution mechanisms, making it difficult to resolve competing claims over property in a fair and efficient manner and/or establish specialized mechanisms to do so.</li> <li>• <b>Lack of enforcement mechanisms</b>, including absence, inability or unwillingness of police and law-enforcement authorities to respect and enforce decisions regarding restitution of property.</li> </ul>
<p><b>Cultural factors</b></p>	<ul style="list-style-type: none"> <li>• <b>Discrimination and/or harmful traditional norms and practices</b> disproportionately affecting women, including prohibitions for women to inherit property, requirements of celibacy or of marriage to relatives of deceased husband, and/or imposition of traditional but sometimes harmful “cleansing” rituals.</li> </ul>
<p>Do you have suggestions about other activities? If so, please share them with us at <a href="mailto:hqidphb@unhcr.org">hqidphb@unhcr.org</a></p>	

## 2. International legal standards and the responsibility of the State

**International (and regional) human rights law** guarantees several rights that are of particular importance for those that have been, or are at risk of being, deprived of their land and property. The right to **peaceful enjoyment of property** includes the right to own, acquire (through purchase, gift or inheritance), manage and enjoy property, without discrimination of any kind. Women should have equal rights with men in all matters relating to property.<sup>1</sup>

National authorities should refrain from arbitrarily depriving people of their property, protect such property from illegal interference by third parties, and ensure restitution and/or compensation of

<sup>1</sup> See e.g. Art. 17 of UDHR; Art 16(2)(h), and 15(2), CEDAW; Arts. 13-19 of ILO Convention No. 169; Art. 14 of AfCHPR and Art. 6(j), 7(d) and 21 of its Protocol on the Rights of Women in Africa; Art XXIII of AmDHR; Art. 21 of AmCHR; Art. 25 of ArCHR and Art 1 of Protocol 1 to the ECHR. The right is further affirmed in various resolutions of the GA, SC and the Council, formerly Commission, on Human Rights, as well as its Sub-Commission; and in the case law of the regional human rights courts. See also Principles 3-7 of Pinheiro Principles and Principle 21 of the Guiding Principles on Internal Displacement.

lost property to the rightful owners following a period of unlawful dispossession. The right to restitution and/or compensation is not conditional on the return to the area where the property is located, but remains valid even when a person chooses not return (often on the grounds of valid security concerns), but instead opts to resettle and integrate elsewhere.

Deprivation of property is not necessarily arbitrary or unlawful in all cases. The authorities may have a legitimate interest in regulating or seizing private or communal property. In order to be lawful any such action must, however, meet certain conditions. It must have a basis in law and serve a legitimate aim, such as protecting the public interest, and be proportionate to achieving this aim. It must also respect certain substantive and procedural safeguards. For example, evictions must be preceded with a timely warning and evictees must be given the opportunity to challenge the eviction order. Even when evictions are deemed to be lawful those affected should be provided with fair compensation.

The right to restitution and/or compensation for lost property is further reinforced by the **right to an effective remedy** for wrongful acts and violations of human rights.<sup>2</sup> Other important rights in this context include the **right to return**<sup>3</sup>, which includes not only the right to return to the area of origin but more specifically to return to one's home or place of habitual residence, the right to **freedom of movement and to choose one's residence**, the right to **respect for the home**, and right to an **adequate standard of living**, including housing and food.

These and other rights are further outlined in the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (*Pinheiro Principles*) and in Articles 21 and 29 of the Guiding Principles on Internal Displacement.

**International humanitarian law** requires all parties to a conflict, whether they are State or non-State actors, to distinguish at all times between civilian objectives and military objectives. More specifically it prohibits:

- direct and indiscriminate attacks and other acts of violence against civilian objectives
- using civilian property to shield military operations or objectives
- pillage and/or destruction of private and public property
- making private property the object of reprisals or collective punishment.<sup>4</sup>

Military objectives are generally defined as being limited to those objectives which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

### 3. Preventing and responding to deprivation of property

Safeguarding property-related rights in situations of internal displacement requires multi-sectoral efforts that aim to:

- prevent arbitrary deprivation of property
- preserve property which has been abandoned or lost during displacement

<sup>2</sup> See Art. 8 of UDHR; Art. 2(3) of ICCPR; Art. 6 of CERD; Art. 30 of CRC; Art. 75(1) of the ICC Statute; and, at the regional level, Art. 10 and 25 of AmCHR; Art. 7 of AfCHPR and Art. 25 of its Protocol on the Rights of Women in Africa, and Art. 13 of ECHR. See also Arts. 35 and 26 of the Articles on State Responsibility, as well as resolutions of the Council, formerly Commission on Human Rights, including 2005/35. See also Principle 2 of Pinheiro Principles.

<sup>3</sup> See e.g. Art. 13(2) of UDHR; Art. 12(4) of ICCPR; Art. 16(3) of ILO Convention No. 169; and, at the regional level, Art. 12(2) AfCHPR; Art. 22(5) of AMCHR; and Art. 3(2) of Protocol IV to the ECHR. See also Principle 10 of the Pinheiro Principles and Principle 28 of the Guiding Principles on Internal Displacement. The right also has been affirmed in resolutions of the UN Security Council, General Assembly and Human Rights Council (formerly Commission) and its Sub-Commission; as well as in the case law of the regional human rights courts.

<sup>4</sup> See Rules 7-23 of Customary International Humanitarian Law, Volume I: Rules (ICRC, 2005). See also Arts. 33 and 53 of the Fourth Geneva Convention; Arts. 51 and 52 of Additional Protocol I; Art. 4(2)(g) of Additional Protocol II; Art. 28 of the Hague Regulations. See also Art. 2(b)(xvi) of the ICC Statute.

- provide an effective remedy for arbitrary deprivation of property, in the form of restitution and/or compensation.

**Restitution**, which refers to the return of lost property to its rightful owner, is generally the preferred remedy as it both redresses the wrong done and facilitates return and reintegration in the area of origin. The right to restitution is not restricted to those holding legal title or claim to property, but also extends to other forms of ownership or title, such as tenancy, occupancy or user rights in collective or communal property.

The legitimate rights of third parties that may be affected by the restitution of land and property need to be taken into account, in particular those who acquired land or property in good faith and are obliged to leave it once it is restored to the original owners.

**Compensation**, in cash or in kind, can be given in lieu of restitution in cases where restitution is either impossible or impracticable, such as for reasons of security or public interest. It can be difficult to calculate the value of lost property, in particular if the value has changed during displacement, but efforts must nevertheless be made to ensure that any compensation is adequate and fair.

Experience indicates that compensation is less successful than restitution. In many cases, displaced persons either remain displaced or are displaced a second time because of difficulties to integrate and secure a sustainable livelihood in areas of relocation. In addition, land and other property may have a symbolic, cultural or religious value which compensation can rarely address.

Restitution and/or compensation usually take place through existing judicial, administrative or traditional mechanisms. Where such mechanisms are non-existent, mal-functioning or over-burdened, special land and/or property claims commissions can be established. Efforts to address land and property disputes should always be accompanied with mediation and reconciliation efforts, which can help to reduce the risk of renewed conflict and displacement.

Regardless of the form that they take, restitution and/or compensation mechanisms should meet certain minimum standards, including:

- Be independent, impartial and transparent, respect standards of due process, and use all appropriate forms of remedies, including both restitution and fair and equitable compensation. Such mechanisms should not be prejudiced by or promote the return or non-return of internally displaced persons.
- Be accessible to all those that have been deprived of their property, regardless of current place of residence or socio-economic status; be free of charge; and enable submission of claims in all relevant languages. Displaced individuals and communities must be informed of such mechanisms through sufficient and appropriate outreach and public information.
- Decisions should be respected by political, judicial and administrative authorities and be enforced by law-enforcement authorities, while taking into account the rights of secondary occupants and evictees by providing, where appropriate, alternative land or housing.
- Their mandate should cover all residential sectors and address different types of land, housing and property rights, and extend them not only to those with legal title to property, but also to tenants, usage rights holders, dwellers and customary rights holders.

## 4. The role of human rights and humanitarian actors

Safeguarding land, housing and property rights should form part of the protection strategy during all stages of displacement. These rights are integral to any attempt to restore justice and the rule of law in post-conflict settings and to ensure a safe, sustainable and dignified return. With the realization of these rights, displaced persons might have better chances of earning their livelihoods, would be less dependent on humanitarian assistance, and might be less exposed to further violations.



## In our work we can ...

### Assessment and analysis

(See Part III.1)



- Ensure that protection assessments and analyses adequately address land and property issues, and support specialized land and property assessments where these take place. This could, for example, include analysis of: (i) the different legal, cultural or traditional systems of ownership, tenancy and use of land and property; (ii) distribution of land among different population groups; (iii) any disputes or root causes of conflict related to land or property; (iv) existing laws and mechanisms for restitution and/or compensation; (v) the obstacles IDS face or are likely to face when trying to preserve or reclaim property.

### Prevention

- Encourage relevant authorities and other actors to respect property related rights and refrain from evicting or displacing individuals and communities from their land or property. The authorities should also ensure that relevant procedural safeguards are complied with when displacement is unavoidable and lawful, and that individuals have access to appropriate remedies.
- Encourage relevant actors to take measures to protect property rights once displacement has occurred. Such measures could, for example, include temporary freeze on the purchase or transfer of land and property in areas affected by or at high risk of displacement, and/or the organisation of public information and outreach campaigns to discourage secondary occupation or damage of abandoned land and property.
- Try to collect information, for instance during registration, about any land, housing and other property that displaced individuals and communities may have lost or been forced to abandon. Where security conditions allow initial housing, land and property rights assessments should be conducted.

### Contingency-planning

- Encourage the authorities to take measures to ensure that displacement does not result in loss or destruction of land and property registries, cadastral records and/or personal documents that can provide proof of ownership or tenancy or user rights. This may, for example, include ensuring that registries and records are kept in a safe location and that back-ups/copies are regularly taken and safely stored.

### Legislation

- Following a review of national laws, policies and practices, including traditional and cultural practices, advocate with relevant authorities to ensure that the rights to land and property are adequately protected in national legislation, without discrimination of any kind, including on grounds of gender. The authorities should be encouraged to take note of and use relevant international standards and principles, such as the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons.







### Capacity-building

(See Part IV.4)



- Build the capacity of land/property registries offices and/or existing judicial, administrative, traditional and other mechanisms that can resolve land and property disputes in a fair, effective and timely manner and with respect for international law and standards. This can include the provision of training, technical and operational expertise, and modest financial or material assistance, including office and other equipment. Such efforts should draw on lessons learned in other contexts.
- Where existing mechanisms are mal-functioning or over-burdened consider supporting the establishment of specialized tribunals or commissions that can address property-related claims. Such mechanisms must respect basic substantive and procedural safeguards, and be fair and non-discriminatory.



<p><b>Training</b></p>	<ul style="list-style-type: none"> <li>• Support, facilitate or undertake training programmes in human rights, including housing, land and property rights, for displaced persons, national and local authorities, national human rights commission, NGOs, and civil society organizations.</li> </ul>
<p><b>Information and communication activities</b> (See Part IV.6)</p> 	<ul style="list-style-type: none"> <li>• Support information activities that provide displaced persons and affected communities with information about property-related rights and any available avenues or mechanisms for reclaiming or seeking compensation for lost property.</li> <li>• Seek to inform displaced individuals and communities about the importance of safeguarding documents and any other material that can provide evidence of their title to land and other property.</li> </ul>
<p><b>Legal advice and assistance</b> (See Part IV.5)</p> 	<ul style="list-style-type: none"> <li>• Support legal aid clinics and networks of lawyers, paralegals and others that can provide legal advice and assistance to displaced persons and returnees. In addition to giving advice, such centers and networks could assist individuals in filling in forms, appearing before property tribunals or commissions, and reaching a settlement. They could also facilitate dialogue and reconciliation among opposing sides by mediating and/or acting as ‘good offices’.</li> </ul>
<p><b>Physical safety</b> (See Part V.3)</p> 	<ul style="list-style-type: none"> <li>• Advocate with relevant authorities and other actors, including peacekeeping missions where present, to guarantee the security and safety of persons that have, or wish to, return and/or reclaim their land or property.</li> <li>• Liaise with relevant national and international actors to ensure that any mine-affected areas are identified, assessed, and cleared at the earliest opportunity. This should include land, homes, public spaces, such as schools and market sites, roads, and paths (e.g. those used by women and children to collect water or firewood).</li> </ul>
<p><b>Monitoring</b> (See Part IV.1)</p> 	<ul style="list-style-type: none"> <li>• Monitor potential negative impact of land distribution or restitution programmes to prevent further violations of rights, particularly where such systems aim to establish legal title over land, housing or property that was previously publicly, collectively or communally owned/used. Pay particular attention to the ability of women, children and indigenous peoples to claim and establish title.</li> </ul>
<p><b>Shelter / Livelihoods</b> (See Parts V.13 and 16)</p> 	<ul style="list-style-type: none"> <li>• Advocate for allocation of land to displaced individuals and communities during displacement to facilitate self-reliance and sustainable livelihoods. This can include temporary or permanent allocation of governmentally-owned land or purchasing/loan of privately-owned land. Special efforts must be made to reach an agreement with landowners who resent the presence of IDPs on their land to avoid tensions from arising and secondary displacement from taking place.</li> <li>• Advocate for and support programmes that provide transitional, temporary or permanent housing to meet immediate needs for shelter. Such programmes can involve repairs of damaged housing, construction of new housing, or identification of public property that can serve as temporary shelter. Use of temporary shelter should not in any way undermine a person’s right to restitution or compensation for lost property.</li> </ul>
<p><b>Community mobilization and reconciliation</b> (See Part IV.10)</p> 	<ul style="list-style-type: none"> <li>• Encourage and support national consultations, including all relevant stakeholders, aimed at identifying challenges or obstacles to accessing remedies and finding fair and practical solutions to land, housing and property-related claims.</li> <li>• Work with and support local authorities, civil society and other community groups to address issues relating to land and property, including through active dialogue, mediation, and reconciliation efforts.</li> </ul>



### Durable solutions

(See Part VI)



- Advocate for the inclusion of provisions on housing, land and property rights, and restitution and/or compensation, to be included as a part of a human rights/rule of law component of peace agreements, development and/or voluntary return agreements, policies and programmes.
- Encourage the authorities to allocate land to displaced individuals and communities who cannot or prefer not to return to their areas of origin. Allocation of land should be permanent and the new owners/users provided with documentation providing proof of ownership or tenancy/user rights in order to avoid evictions and renewed displacement. Single heads-of-households and older persons should be allocated land on equal basis with others.

Do you have suggestions about other activities? If so, please share them with us at [hqidphb@unhcr.org](mailto:hqidphb@unhcr.org)



## 5. Key actors

In addition to displaced individuals and communities, key partners include:

- At the **national level**, ministries of interior, justice and social affairs, courts and tribunals, administrative or specialized property tribunals or commissions, traditional, customary or religious councils, national human rights commissions, social/housing service agencies, legal or paralegal networks, and civil society.
- At the **international level**, key actors include UNDP, HABITAT, FAO, OHCHR, IOM, UNHCR, the World Bank, Regional Developmental Banks, and various NGOs, such as the Norwegian Refugee Council. The UN Human Rights Council also has a Special Rapporteur on the right to housing and a Special Rapporteur on the right to food can also play a role.



## References

- *United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles)*, COHRE, 2005. [www.cohre.org](http://www.cohre.org)
- *A Handbook on Implementing the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons*, FAO/NRC/OCHA/OHCHR/UN-HABITAT/UNHCR, 2007. [www.refworld.org](http://www.refworld.org)
- *Housing and Property Restitution for Returnees*, Refugee Survey Quarterly, Vol. 19, No. 3, UNHCR and Oxford University Press.
- *Remedies for Violation of Rights to Housing, Land and Property*, in Manual for Domestic Legislators on the Implementation of the Guiding Principles on Internal Displacement in Domestic Law and Policy, Brookings-Bern Project on Internal Displacement and American Society of International Law, forthcoming 2008.



## Useful websites

- Centre on Housing Rights and Evictions (COHRE): [www.cohre.org](http://www.cohre.org)
- Internal Displacement Monitoring Centre (IDMC): [www.internaldisplacement.org](http://www.internaldisplacement.org)
- United Nations Human Settlements Programme (UN-HABITAT): [www.unhabitat.org](http://www.unhabitat.org)
- International Organization for Migration (IOM): [www.iom.int/pressproject](http://www.iom.int/pressproject)