Housing and Property Restitution for Refugees and Displaced Persons

Implementing the Pinheiro Principles in the Middle East and North Africa

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ABBREVIATIONS

ACHPR	African Commission for Human and Peoples Rights
ADR	alternative dispute resolution
AJACS	Access to Justice and Community Security
ANND	Arab NGO Network for Development
BBAC	Bank of Beirut and Arab Countries
CCPR	Human Rights Committee (UN), monitoring and interpreting ICCPR
CD	civil documentation
CDC	Community Development Council
CEDaW	International Convention on the Elimination of All Forms of Discrimination against Women
CEDaW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CFD	Central Fund of the Displaced (Lebanon)
CFS	Committee on World Food Security
CIREFCA	International Conference on Central American Refugees
CRC	Convention on the Rights of the Child
CRPC	Commission on Real Property Claims (Bosnia-Herzegovina)
CRRPD	Commission on the Resolution of Real Property Disputes (Iraq)
CRVS	civil registration and vital statistics
CUBES	Centre for Urban and Built Environment Studies (Witwatersrand University)
CVE	countering violent extremism
DLC	Darfur Land Commission
DP	displaced person
DPKO	Department for Peace Operations
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ESCR	economic, social and cultural human rights
FAO	Food and Agriculture Organisation of the UN
FGD	focus group discussion
FLA	Free Lawyers Association
FPIC	free, prior and informed consent
FSA	Free Syria Army
G7	Group of Seven (largest and advanced economies of the world: Canada, France, Germany, Italy, Japan, United Kingdom and the United States).
GC	General Comment (issued by a UN treaty body)
GIZ	Gesellschaft für Internationale Zusammenarbeit
GLTN	Global Land Tool Network
GMO	Gender Monitoring Office (Rwanda)
GoL	Government of Lebanon
GoS	Government of Syria
GR	General recommendation (of CEDaW or CERD)
ha	hectares
HIC	Habitat International Coalition
HLP	housing, land and property
HLRN	Housing and Land Rights Network
HRAH	human right to adequate housing
HRBA	human rights-based approach
HRC	Higher Relief Commission (Lebanon)

HTS	Hayat Tahrir al-Sham
IAP	International Accountability Project
IATF	Inter-Agency Task Force on Syria
IBRD	International Bank for Reconstruction and Development
ICARA	International Conference on Assistance to Refugees in Africa
ICCPR	International Covenant on Civil and Political Rights
ICERD	Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICG	International Crisis Group
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICLA	Information, Counselling and Legal Assistance (Norwegian Refugee Council)
ICRC	International Committee of the Red Cross
ICTJ	International Center for Transitional Justice
IDMC	Internal Displacement Monitoring Centre
IDP	internally displaced person
IDRC	International Development Research Centre
IED	improvised explosive device
IER	*Instance Équité et Réconciliation* (Morocco)
IFRCRCS	International Federation of Red Cross and Red Crescent Societies
IHL	international humanitarian law
IHRC	International Human Rights Clinic (Harvard Law School)
ILAC	International Legal Assistance Coalition
ILC	International Law Commission
INDR	International Network on Displacement and Resettlement
IOM	International Organisation for Migration
IPCC	Iraq Property Claims Commission
IQD	Iraqi dinars
IRC	International Rescue Committee
ISIL	Islamic State in Iraq and the Levant
km^2	square kilometre
LAIC	Legal Aid and Information Centres (Ockenden)
LCD	legal and civil documentation
LMD	Lebanese Ministry of the Displaced
LPU	Land and Property Unit
LSP	Livelihood Support Programme
MoFA	Ministry of Foreign Affairs
MRG	Minority Rights Group
NFI	non-food item
NGO	non-governmental organization
NRC	Norwegian Refugee Council
NHRC	National Human Rights Commission
OCHA	Office for the Coordination of Humanitarian Affairs
ODA	official development assistance
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the (UN) High Commissioner for Human Rights
OHR	Office of the High Representative
oPt	occupied Palestinian territory
OSCE	Organisation for Security and Cooperation in Europe
OSE	Office of the Special Envoy

PCBS	Palestinian Central Bureau of Statistics
PCC	Property Claims Commission (Iraq)
PKK	Kurdish Workers Party [Kurdish: *Partiya Karkerên Kurd*]
PLIP	Property Law Implementation Programme
PNO	Protection Needs Overview
PVE	preventing violent extremism
RAD	Refugee Aid and Development
RAR	Rapid Assessment and Response
RART	Rapid Assessment and Response Team
RLRC	Rwanda Law Reform Commission
RRTF	Reconstruction and Return Task Force
SARC	Syrian Arab Red Crescent
SDF	Syrian Democratic Forces
SHPNA	Syria Hub Protection Needs Assessments
TJ	transitional justice
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNAMID	African Union - United Nations Mission in Darfur
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNCC	United Nations Compensation Commission (Kuwait)
UNCHR	United Nations UN Commission on Human Rights
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous People
UNEP	United Nations Environment Programme
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UN-Habitat	United Nations Human Settlements Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNISDR	UN Office for Disaster Risk Reduction
UNMIBH	United Nations Mission in Bosnia Herzegovina
UNMIK	United Nations Mission in Kosovo
UNPCC	UN Palestine Conciliation Commission
UNRoD	UN Register of Damage
UNRWA	United Nation Refugee Works Agency for Palestine Refugees in the Middle East
UNSC	United Nations Security Council
UNTAET	UN Transitional Authority in East Timor
UNTS	*United Nations Treaty Series*
US$	United States dollars
USIP	United States Institute of Peace
VAR	voluntary assisted return
WIPO	World Intellectual Property Organisation
YPG	People's Protection Units ([Kurdish: *Yekîneyên Parastina Gel*]

FOREWORD

[joint statement by OHCHR, UNHCR, NRC, IOM, UN-Habitat]…

The urgency of applying these Principles addresses a grave situation prevailing in the world today, characterised by a great gap in the protection and assistance needs of refugees and displaced persons within "the erosion of values of humanity and respect for human rights." While this Handbook proffers the Principles within the phenomenon affecting the MENA region, it takes place within a global setting in which, for both political and climatic reasons, the rule of international law is indispensable now for the longer-term survival of our threatened planet.

This timely presentation of the Principles in the context of both regional specificity and lessons learned has made possible their consideration within the current global policy frameworks for equitable and sustainable development that derive from cumulative lessons and experience to guide policy and practice on any and all cases of conflict prevention and resolution, transitional justice (TJ), state building, peacebuilding, supporting fragile states, humanitarian assistance, eliminating discrimination, resolving protracted crises and financing for development. It is in this contemporary context that the Pinheiro Principles continue to guide all practitioners of HLP restitution, whether in the bureaus, decision-making bodies, or in the field of operations….

INTRODUCTION

The societies of the Middle East and North Africa (MENA) have evolved over millennia as a coherent region of the world that is home to deeply intermingling cultures, traditions, coexisting throughout history with a rich diversity of institutions and systems. The region also has shared a common experience of serial displacements. Over recent decades, MENA has earned the distinction of hosting the largest concentration of refugees and displaced persons (DPs), with over 2 million new DPs in 2016 alone.[1] New and long-standing cases of displacement call for the rightful restitution of housing, land and property (HLP) for a combined total of at least 31 million people across the region.[2]

Interpreting any universal norms and globally determined principles amid such volume and complexity of displacement poses a daunting challenge to any of the region's practitioners operating in the field of HLP restitution in the context of returning refugees and DPs. To assume a regional approach to remedying this problem cannot be a shorthand exercise, especially given the geographical scope and historic depth of forces leading to the prevalence of refugees and DPs from the Gulf to the Atlantic.

Large-scale displacements often have broader regional impacts, and experience has demonstrated the corresponding need for regional approaches toward durable solutions, including voluntary return and repatriation in dignity and rights. A key to that remedy is the restitution of HLP rights within an approach that, at once, aligns humanitarian assistance with sustainable development approaches within the framework of human rights, with the remedial and preventive applications of human rights norms. Taking account of the regional context, responses nonetheless must be tailored to local or micro-level conditions within countries of origin. These will vary from one locality to another, involving diverse opportunities and constraints for return and restitution.

Background

An increasing recognition of the importance of HLP rights and restitution has emanated from diverse upheavals in the wider world also.[3] We have much to learn from the response in the MENA region, whose peoples have built and rebuilt civilizations throughout the ages. Historically, this is also the region from which the world's first cities arose, including some of the oldest continuously inhabited human settlements on the planet. Amid this sedentary tradition, the region also has been the scene of the earliest recorded population transfers, not least since the infamous forced migrations and exile imposed across the ancient Neo-Assyrian Empire.[4] Although population transfer has long been prohibited in international law and now considered both a war crime and crime against humanity,[5] the practice continues nonetheless in MENA, carried out by both domestic and external forces.

Out of the passage of MENA civilisations also came the world's first legal remedy to forced migrations and the first recognition of the right to restitution, secure residency and tenure for refugees and forcibly displaced persons and communities. These rights and corresponding commitments of the state were enshrined in the Cyrus Cylinder in the sixth Century B.C.E,[6] which is considered as the world's first human rights instrument and the source of the legal right of return. Much later, the MENA region also gave us the first elaboration of the law of nations by Muḥammad ibn al-Ḥasan al-Shaybānī (749/50–805),[7] centuries before Hugo Grotius (1583–1645) wrote his *Prologomena* on the subject.[8]

The continuity of civilization and the cohesiveness of society (social cohesion), like the stability sought in the modern interstate system, greatly rely on multilateralism and partnership. In the enduring spirit of

Ibn Khaldun and his notion of group solidarity (*'asabiyya*),[9] such partnership is required of all parties to deliver solutions to the today's displacement crisis as a common priority and shared responsibility.

While ancient precursors to displacements and corresponding rights to return and HLP restitution are inherent in the region, the current forms of exile and displacement come under modern standards and methods that have developed international law norms. The concepts of voluntary repatriation and return have evolved into conditions precedent that require not simply the return of refugees or internally displaced persons (IDPs) return to a place of origin, but a return to, and re-assertion of control over their original home, land or property. Hence, these norms, enshrined in the Pinheiro Principles and this Handbook, have been established through agreement among States to expect the best possible behaviour and outcomes in HLP restitution.

The application of these norms and lessons learned in the 1990s made it possible to achieve a "decade of repatriation" for refugees and DPs in the wider world, with more than 10 million returnees, averaging over one million refugee returnees per year.[10] However, that measure of success never has been repeated. While decades-long protracted displacements continue in MENA, since the early 1990s, millions of the region's refugees and DPs still have recovered and inhabited their original homes, lands and properties through restitution processes, while smaller numbers have accepted compensation in lieu of return. The various HLP-restitution processes represent a historic convergence of theoretical norms with an emphasis on practical operation. These HLP-restitution efforts still seek harmony among short-term and essentially humanitarian-driven responses with longer-term and institution-building sustainable-development approaches within the compatible framework of human rights. These interlocking functions constitute the basic recipe for maintaining the communities—and the States—that have undergone upheaval, even existential threats.

The integrated approaches that pursue remedies to displacement are increasingly grounded in the principle of restorative justice, with HLP restitution as a legal and practical remedy that can support refugees and DPs in choosing their durable solution (whether return, resettlement, local integration or other mode of adaptation). This shift to more-integrated solutions has had a profound impact upon the entire return and repatriation dynamic, as well as the manner by which the international community and local actors have become involved. Importantly, these operational changes have not been purely political or humanitarian in nature, but increasingly have been reflected in international, regional and national laws, institutions and procedures that operationalize HLP restitution as a basic, self-standing human right, interdependent with related human rights and States' corresponding individual, collective, domestic and extraterritorial obligations.

The right to a remedy for human rights violations has perhaps been most authoritatively articulated in the UN General Assembly (UNGA) resolution defining the reparations framework. In that declaratory instrument, grounded in the world's major legal systems, as well as international human rights and IHL principles, the GA has affirmed that:

> "(r)estitution should, whenever possible, restore the victim to the original situation before the gross violations of human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship; return to one's place of residence, restoration of employment and return of property."[11]

One year before the GA adopted that legal definition, the UN's Sub-Commission on the Promotion and Protection of Human Rights endorsed the Principles on Housing and Property Restitution for Refugees and Displaced Persons ("Pinheiro Principles"). These Principles were the subject of a seven-year process

that began with 1998 adoption of Sub-Commission resolution 1998/26 on Housing and property restitution in the context of the return of refugees and IDPs. That was followed in 2002–2005 with a study by the Sub-Commission Special Rapporteur on Housing and Property Restitution Paulo Sérgio Pinheiro. The final outcome was a proposed set of principles adopted in their final form as presented hereunder.

Following the 2007 publication of the inter-agency handbook for implementing the Pinheiro Principles with global scope,[12] the present handbook builds on the ensuing decade of developments and channels the efforts of experts and specialized organizations concerned with the overwhelming challenges of HLP restitution in the MENA region. By contextualizing the Pinheiro Principles in MENA, this handbook seeks to place them in the context of the related international and regional norms and instruments as developed to date, as well as operational lessons learned in the field that enables the much-needed restoration and stability of the region's communities, societies and States .

Purpose

This new-edition handbook seeks to combine and proffer as many as possible of the cumulative lessons and tools to realize the Pinheiro Principles at a critical historic moment. Since time immemorial, the peoples of the MENA region repeatedly have exemplified the quality of resilience, having undergone so much upheaval amid the rise and fall of great civilizations, rebuilding after serial invasions and population displacements. Meanwhile, "resilience" just recently has emerged as a much-cited objective and term of art in the development world, anticipating further crises, especially in confronting climate change. However, current trends in terminology do not supplant the enduring wisdom of sustainable development, with its own normative framework that the notion of resilience—bouncing back, but not necessarily advancing forward—does not share. Like the best practices in the HLP-restitution field, the Pinheiro Principles and this handbook aim to enable both resilience and sustainable development together amid greater policy coherence.

Within the framework of human rights, both the Principles and this handbook have been developed cognizant that resilience of refugees and DPs accompanies a demand of responsibility for the human-made crises that test and require their recovery. This handbook has been developed mindful that forced eviction qualifies as a gross violation of human rights[13] and that population transfer constitutes a serious crime against humanity and war crime, as prosecuted at Nuremberg and Tokyo,[14] and now codified in international criminal law. [15] The post-World War II trials established the principle of personal responsibility for the harm done,[16] but provided little access or remedy for victims.[17]

While the concept of accountability is never far from HLP restitution for returning refugees and DPs, the Pinheiro Principles and this handbook are not designed to determine accountability and liability for losses, costs and damages. That is the subject of other processes. Many of the displacement and related violations have taken place without the perpetrators and responsible parties being either prosecuted, apprehended or identified. The Principles and this handbook focus rather on the reparation of victims, specifically through HLP restitution, with a view also to the preservation of the protecting State.

Much study and experience have demonstrated strong and well-established inter-linkages between voluntary migration and development; i.e., migration can drive development, and vice versa.[18] Although the scope of these links and their potential in refugee and IDP displacement and return situations have not yet been fully realised in the MENA region, development-led strategies further support sustainable return, and vice versa. The positioning of the long-term processes of return, restitution and development within the applicable framework of constantly applicable human rights leads us to the purpose and aim

of this handbook in providing both normative and operational guidance to realize the convergence of humanitarian, development and human rights approaches.[19]

As a consolidated text relating to the legal, policy, procedural, institutional and technical aspects for HLP restitution, the Principles provide specific guidance also for "upstreaming" lessons and outcomes. They guide the development of legislation, programmes and policies based on existing international human rights, IHL, refugee law and national standards. To this end, the Principles reflect some of the most-useful lessons of practice from Afghanistan, Bosnia-Herzegovina, Burundi, Cambodia, Cyprus, Guatemala, Iraq, Kosovo, Rwanda, South Africa and Sudan. The added value and purpose of this Handbook are to make that guidance relevant to the challenges that face all practitioners in the MENA region.

Using This Handbook

The intended users of this Handbook are field staff of inter-governmental organisations, international and national non-governmental organizations (NGOs), public actors in central and subnational spheres of government, and those active at all levels, whether working in humanitarian, post-conflict, early recovery sectors, reconstruction or sustainable-development fields involving returning refugees and displace persons. In the aftermath of tragedy that caused the displacement, all these actor are on the frontline, regularly facing difficult situations and operational dilemmas where they are entrusted with securing HLP restitution for refugees and DPs. They often can find themselves unprepared to deal appropriately with the numerous questions, complexities and risks associated with the implementation of restitution rights. The Pinheiro Principles and advice derived from practice in this handbook seek to shorten the learning curve and avoid errors in judgment and the loss of opportunities and resources.

Meanwhile, developing a "one-size fits all" and universally applicable approach to HLP restitution may be unrealistic, even across a coherent and contiguous region. Tremendous diversity of restitution predicaments prevail from country to country and, often, within a country, depending on the local circumstances and historic trajectory of displacements. The Principles and further guidance here should equip the practitioner to manage dilemmas and make informed choices.

This volume also helps the user to address multi-sphere application of the Principles and ensure desired coherence. While the world recognizes the responsibility for the refugee and displacement crisis to be shared globally,[20] that responsibility is often disproportionately discharged locally. The Principles also hold the potential to support all those participants in the recovery process, whether they are the refugees or DPs themselves, local or central governments and authorities, domestic or international agencies, public or private sector entities, media professionals, local or international NGOs, whether operating within the jurisdictional State of origin, or in the bureaus of distant capitals.

Users will find that this Handbook relates as much as possible to the MENA region, citing relevant lessons and examples, where they exist. The sections **Opportunities for Applying** each of the Pinheiro Principles is followed with reference to relevant theoretical and practical literature under **Useful Guidance**.

Facing Common Dilemmas

All parties are called to this test. From one linear extent of the MENA region to the other, an unprecedented phenomenon of internal displacement and cross-border refugee flows have become today's norm, owing to a variety of forces—both old and new. These range in nature from ethnic conflict to colonization, development projects and climate change.

Formal peace agreements or other political arrangements expected to end conflicts in countries of origin have provided the usual context for refugee return. With the exception of Sudan, the MENA region lacks a tradition of peace treaties or political arrangements that accommodate refugees' and DPs' return or HLP restitution. Globally, however, actual return mostly has taken place in areas that have been far from peaceful and stable, even though classified as "post-conflict recovery."

Host and return governments, as well as the international aid community, need to recognize this complexity and fluidity. The conceptualisation of durable solutions as linear, sequential, mutually exclusive, progressive and permanent often has been too narrow, idealistic and rigid to capture what has been happening on the ground. In such imperfect circumstances and amid many inevitable HLP restitution gaps, the local agency and self-initiative of DPs and returnees to build their own solutions has become a norm in practice.

Since the adoption of the Pinherio Principles, interventions that have applied them necessarily address both the regional and the development dimensions of displacement and return. The effective application of the Pinheiro Principles has led to the recognition that regional approaches are needed, including DPs and refugees in protracted displacement along with their hosts. This is evident not least by the multiple consequences of displacement on all States of the MENA region. This regional dimension was reflected also in the responses to other emblematic cases cited here, ranging from the Balkans to the Great Lakes Region of sub-Saharan Africa, to Asia. For example, in 2012, the world's first regional treaty on internal displacement African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa (the "Kampala Convention"), came into force.[21] This Handbook attempts to purvey—or at least provoke—the needed regional vision and approach that other problem solvers have put into practice.

In this diversity of cases across the region reside at least two common initial dilemmas in the restitution of refugees' and DPs' homes, land and property: One emanates from the temporal question of the historic point at which to begin to treat HLP restitution after refugees' and DPs' uprooting. The other stems from the need to resolve the root causes of displacement or pursuit of refuge.

In facing the first of these dilemmas, we may find ourselves asking first where to begin. As a matter of principle, the simple answer would be to prioritize those who are have undergone loss. If this represents a bias, it is a bias on the side of those who suffer.[22] This echoes the global consensus of the 2030 Sustainable Development Agenda calls for "leaving no one behind" and prioritises "reaching the furthest behind first."

Resolving the second dilemma may be found in the answer to the first. That is, the measures sought in this handbook apply the Principles to remedy the suffering and loss from the violation of HLP rights. Just as accountability is a pursuit beyond these Principles, their victim-oriented approach to end suffering and loss guide the user to resolve the structural causes of the policies, laws and behaviours that violated the HLP rights now subject to restitution.

The consequent dispossession, destruction and displacement have resulted from actions, including through outright aggression, revenge attacks, looting and targeted assaults on HLP, as well as what has been termed "collateral damage."[23] Self-acclaimed liberators also have engaged in conduct that has dispossessed and displaced civilian populations and denied their HLP rights.[24]

The gargantuan tasks outlined here also coexist with growing unilateralism and a contemporary assault on the global legal system, international law and civilising norms that strictly prohibit the violations that

these Principles seek to remedy.[25] The contradiction between certain State behaviour and these civilising norms also has fostered deep disaffection with the international system and political institutions, enabling the recruitment of a generation of adherents to extremism. That common challenge arguably calls for a redoubling of efforts to restore the norms cited here, which were developed over time to uphold the integrity of the interstate system and achieve much-needed stability that enables sustainable development and the enjoyment of human rights.

Cases Precedent

Besides the lessons drawn here from other regions, the pursuit of HLP restitution for refugees and displaced population are not without precedent in MENA. However, the earliest attempts of the last century have yet to reach their normative objective. The Palestine Conciliation Commission (1949–64) was dedicated to the restoration of HLP to those Palestinians forced into cross-border refuge in 1948.[26] Most Cypriot DPs have yet to realize their HLP rights since the violations accompanying the 1963–64 Crisis and the country's invasion and partition in 1974.[27] Some 173,600 Sahrawi refugees remain in desert camps for more than 40 years of exile and denial of self-determination.[28]

Although the Oslo Accords between Israel and the Palestinian Liberation Organization were drafted 15 years before the Pinheiro Principles were adopted, they also reflected the recognition of HLP rights, but only as a subject of "final status" arrangements never reached. In other regional cases where a peace was formalized, during 1991–2005, the United Nations Compensation Commission (Kuwait) has completed its task of assigning compensation for losses incurred during Iraq's invasion and occupation of Kuwait. The UNCC awarded total compensation of $52.4 billion to approximately 1.5 million successful claimants, among which were HLP claims paid through 17 States and two UN agencies.[29]

In 1993, the Lebanese government established the Lebanese Ministry of the Displaced and Central Fund of the Displaced (CFD) to support restoration of the social and economic conditions for some 450,000 Lebanese (14% of the population) who have been displaced during and after the civil war (1975–1990). These arrangements followed the 1989 Taif Agreement[30] and have sought to finance housing and rebuilding projects, support reconciliation initiatives, and help DPs return to their abandoned houses and villages in all Lebanese regions. The effort is not yet completed and has suffered famously from problems of coordination, corruption and political interference.[31]

The region holds examples also of efforts anticipating peace. The UN Register of Damage (from the Wall) in Palestine has carried out its delicate documentation mandate, but without a clearly stated normative objective or prospect for restitution or other form of reparation. A range of international studies and peace initiatives have been conducted on needed HLP restitution for Palestinians in and from Jerusalem.[32]

Yemen's National Dialogue and Restitution of Land Commission are intended to serve the eventual peace and reconciliation process in that state, however delayed by the further development of war, disease and hunger. To advance such initiatives toward their foreseen conclusion, the Pinheiro Principles and this handbook could help decision makers and practitioners pursue the full range of restorative and peacebuilding possibilities when political and logistic conditions permit.

Land and Conflict

The MENA region hosts the gamut of refugee and IDP situations arising from conflict, or conflict arising from HLP disputes, including those external to the region. A land or other property dispute typically produces various factors that pose a threat to peace.

The recovery, restitution and reconstruction processes face a daunting challenge in the MENA region also due to the sheer scale of the consequences they seek to address.[33] The region's cases involve a combination of any of the following factors:

- Widespread destruction, looting and confiscation of property belonging to the displaced population;
- Systematic illegal rental and/or sale of confiscated property areas, often without sales contracts or registry papers, or with forged documentation;
- Coerced transfers and contracts to sell or exchange housing, land, and property made under force, threat or duress;
- High prevalence of secondary occupation;
- Widespread destruction of the commons, natural and cultural heritage, including religious sites;
- Targeted destruction and appropriation of public infrastructure, including the State's HLP administration infrastructure;
- The systematic confiscation and destruction of property records of the dispossessed and/or displaced populations;
- Widespread loss of property documentation and personal identification documents in the process of displacement;
- Lack of HLP titles and related documentation prior to the dispossession, eviction or displacement, especially effecting particular groups whose civil rights or traditional-tenure status and property rights have not been protected;
- Cancellation of agricultural contracts, dispossessing and displacing rural tenure holders and rural workers both economically and physically;
- Chronic or endemic shortage of adequate housing, including basic services, pre-existing and/or coexisting with displacement;
- Legal and administrative restrictions on the human right to freedom of movement and residence;
- Discriminatory ideology of the state, materially discriminating against minorities or indigenous peoples[34];
- Dispossession and/or destruction of HLP carried out on the basis of political or ethnic affiliation, thus establishing new or deepened lines of resentment, fragmentation and loss of social cohesion among the population;
- Many unresolved HLP issues stemming from earlier displacement crises;
- Weak or otherwise insufficient institutions at the central and local level, without the capacity and/or authority required to respect, protect or fulfil HLP rights;
- Displacements from rural or urban locations to urban centres, where refugees and DPs face informality, precarious subsistence, physical insecurity, further attack and other hazards;
- Increased HLP disputes, whether before the courts, alternative dispute resolution (ADR) mechanisms, informal mechanisms, or unresolved;
- Depopulation of the countryside and urbanization that threaten the people's sovereignty on the land and other natural resources;
- Displacements having the purpose and/or effect of demographic manipulation of the affected territories;
- A geopolitical context in which potent forces, including those of the jurisdictional State and external governments, may be the author of actions leading to the dispossession, destruction and/or displacement, and/or oppose the restitution of HLP;
- Increasing levels of xenophobia and hostility from the host community, in the absence of proper integration and social cohesion programs.

In some cases in the MENA region, additional features include:

- The prevalence of land mines, booby traps and improvised explosive devices (IEDs);
- Coercive environment with the effect or purpose of displacement;[35]
- An increase in HLP disputes relying on informal HLP dispute mechanisms;
- Physical limitations on access to sites in the field, due to a breakdown of security;
- HLP claims hampered by the lack of resources to pay out compensation packages.[36]

- Administrative limitations on access to information (additional to the dearth of documentation);

In certain cases across the MENA region, as illustrated by examples below, some public institutions, organizations and their personnel have acquired assets toward HLP restitution, including:

- Newly established or strengthened institutions to remedy HLP issues;
- A body of local experience in displacement and HLP restitution;
- Awareness at the policy level of the urgent need for HLP restitution.

The present situation and its displacement challenges form part of a continuum of long-needed efforts at problem solving with socially responsible governance at the centre of the development and human rights State. The Pinheiro Principles are an attempt to present the norms in summary form, while this handbook seeks to make the norms operational toward that end within the MENA context.

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.

The Pinheiro Principles begin by emphasising their broad scope and versatile application as an integrated body of guidance relevant to local, national, regional and international actors. The Principles to apply the legal norms as developed in human rights law, while seeking related technical and practical solutions practitioners and institutions that operate in either the public, private or civil-society sector.

Principles 1.1 and 1.2 are, in essence, a call for policy coherence that is currently understood to align and harmonize complex goals across sectors. In the context of remedy and restitution, policy coherence also means achieving synergy among short-term humanitarian relief and assistance with longer-term institution-building development approaches, and both within the overarching framework of human rights.[37]

This principle applies to all actors operating domestically or transnationally. The extraterritorial dimension of human rights obligations appears where external parties are factors of displacement and refugee situations, as well as when external parties are involved in restitution and reconstruction. By no less a standard applies in the recognition of the global responsibility for the refugee and displacement crisis, which calls for integrated global approaches and global solutions.[38]

At the same time, that global responsibility is often discharged locally, not least by local governments and local authorities, as well as communities and civil society organisations (CSOs) acting at all stages.

Therefore, **Principles 1.1** and **1.2** apply to all organs of the State, including, where appropriate, local governments and local authorities bearing equal-but-differentiated duties with central government under international law.[39] All bear the responsibility (authority and obligation) to regulate third parties operating within their jurisdiction.

The Principles are inclusive in nature and apply to any and all refugee and displacement situations, including where displacement has resulted in people being "arbitrarily or unlawfully" deprived of their former homes, lands, properties or places of habitual residence. The passive-voice construction of this Principle also implies application to situations even where the author of the violation remains anonymous or unknown. The pursuit of remedy is focused on the victim's entitlement to material restitution, regardless of the cause and her/his deprivation.

The victim approach here considers each category of effected persons in common deprivation of HLP over which they maintain rights. Therefore, the Principles consider both categories of victim recognized under international law; i.e., victims of abuse of power and victims of crime. All categories are thus considered equal in rights and entitlements by virtue of the deprivation of their HLP rights.

This reflects an important expansion of the language used to describe displacement, which formerly often referred more restrictively to "refugees and internally displaced persons" in the particular context of armed conflict, as if subjects of international humanitarian law (IHL) only. The Principles use the more-inclusive term of "refugees and displaced persons"; i.e., *any* displaced persons, internal or external.

This usage confers restitution rights to a broader group of rights-holders based on the recognition of their deprivation, and not conditioned on any causal relationship to a particular duty holder or perpetrator. Therefore, the Principles apply equally to three identifiable sub-groups: (1) refugees; (2) IDPs, including those displaced in the context of disasters and/or development activities, and (3) DPs who flee across national boundaries, but whom neither the host state nor UNHCR formally recognize as holding the status of refugees or asylum seekers. This is relevant in MENA, whereas the some governments insist upon referring to the cross-border asylum seekers as simply "displaced," avoiding the obligations toward them that arise from international law as "refugees."[40] From the HLP-restitution perspective, all categories are potential victims of a reparable violation.

The corresponding entitlements also derive from international law instruments, including those complementary to the Convention on the Situation of Refugees (1951) and the (nonbinding) Guiding Principles on Internal Displacement (1998).[41] However, neither of these standards sufficiently addresses the restitution of HLP and related rights. The UN Basic Principles and Guidelines on Development-based Evictions and Displacement, presented to the UN Human Rights Council in 2007, also incorporates these earlier standards, as well as the reparations framework adopted by the UNGA in 2006.[42] The full right of victims to remedy and reparation involves restitution as one among six other entitlements, including also: return, resettlement (if return is physically impossible), rehabilitation, compensation for those values not possible to restore (*restitutio in integrum*), guarantees of non-repetition and the victim's satisfaction with the remedy.[43]

The application of these Principles is also not exclusive to large-scale dispossessions or displacements. As mentioned, they are intended to apply to *all* cases of involuntary displacement committed by any party in either the cross-border or domestic context. Such cases may take on the character of "ethnic cleansing," [44] population transfer, [45] related demographic manipulation and other acts echoing the seriousness of genocide.[46] However, various scales of HLP dispossession and displacement can result also

from development projects, urban forced evictions and natural and human-made hazards, invoking the same HLP-restitution entitlements for those affected. Those displacements might not be with "the intent to destroy [a group], in whole or in part," but their consequences may resemble such deliberate outcomes.

In essence, the Principles reflect the perspective that no situation of conflict, occupation, war, development project, criminal activity, abuse of power, development projects, extractivism, demographic manipulation, population transfer, institutionalised discrimination, nor environmental disaster, as well as cases involving any combination of these factors, is justifiable grounds to endure the loss of HLP over which the deprived persons retain rights. The Principles seek to restore those HLP rights in any and all cases of eviction or displacement.

Opportunities for Applying Principle 1: Scope and Application

Wherever HLP rights violations have afflicted DPs and refugees, remedy may call for any combination of possible scenarios for applying these Principles, including:

Training – While all of these Principles serve in the training of practitioners in the field of HLP restitution, Principle 1 provides a starting point for building awareness of the human rights dimensions of displacement, as well as the rights and corresponding obligations. The method of training on these Principles should meet the needs of the participants, considering their role as refugees or DPs, duty holders functioning in public service, legal practitioners, service providers or field personnel. Thus, the training should be distinct from and beyond theoretical human rights education or awareness raising.

Some international organizations and NGOs notably have used the Pinheiro Principles for training purposes.[47] These experiences may inform the design and delivery of needed *professional* training, which calls for methods and materials especially for the specific roles and functions[48] of practitioners, including:

Community organizers
Educators
Financial officers
Law enforcement and security forces
Legal and judicial practitioners
Local authorities
Media
Parliamentarians
Policy makers
Private-sector actors
Public servants
Refugees and DPs

Influencing the contents of peace agreements – Peace agreements should provide for HLP restitution as a minimum standard. The earliest post-war arrangements considered reparations only for States, but not for victims, and any resettlement or absorption of refugees and DPs was left to the domestic capacities of individual States.[49]

However, peace arrangements over the past century have evolved from terms negotiated only between and among governments of belligerent States to the present generation of peace accords that typically include provision for certain elements of reparation for the victims, in particular, refugees and DPs.[50] (Examples will follow.) The Pinheiro Principles now provide the elements of peace agreements that help planners and negotiators learn from foregoing successes and lessons learnt, and help them anticipate challenges of the return to some kind of normalcy.

Post-conflict and peacekeeping operations – While HLP restitution remains one of the greatest peacekeeping challenges, it remains one of the most important.[51] Several peace operations have been involved directly in housing and property restitution efforts.

Examples include both UN and African Union peace-keeping operations. The UN Mission in Kosovo (UNMIK) established and managed the Kosovo Housing and Property Directorate and Housing and Property Claims Commission (HPCC). A Land and Property Unit within the UN Transitional Authority in East Timor (UNTAET) developed detailed proposals for institutionally addressing restitution questions. In the 1990s, the genocide in Rwanda, civil war in Burundi and state collapse in the Democratic Republic of Congo, the Arusha Agreement and, in particular, its Protocol IV, provided for a *Commission Nationale de Réhabilitation des Sinistrés* to facilitate the return of the refugees and DPs, while addressing HLP-related issues. Until the present, Sudan has the only peace agreement in the MENA region that enshrines these principles in any form.

Closer to the MENA region is the joint UN and African Union peacekeeping operation in Sudan's Darfur State. The African Union - United Nations Mission in Darfur (UNAMID) has faced challenges not least in addressing the root causes of exile, statelessness, discriminatory violence and conflict that eroded the State's ability to protect. It also faced the need to restore protection and build the agency of those who are forcibly displaced or similarly threatened.[52]

Transitional justice (TJ) – In the context of fundamental political change and its transition, HLP restitution processes historically have involved both judicial and administrative processes. The administrative remedies have pursued a variety of institutions and methods. Those range from corporations paying compensation—however indirectly—to institutions in the name of victims,[53] to mounting trials, truth commissions, amnesty, lustrations, or reparations. Some processes have been introspective, while focused on assuaging victims in a single country. The South African Truth and Reconciliation Commission and the Moroccan Equity and Reconciliation Commission (*Instance Équité et Réconciliation* [IER]) are examples of processes to air victims' testimonies for the record, while, of these, only the South African example accompanied a transition to an alternate political system.

Cumulative practice has formed around five principle TJ processes, although in no prescribed order:

1. Remembrance, documentation and acknowledgement of the pain, suffering, loss, motivations, etc., in order to reconstruct the broken past and determine the violations (including grave breaches and crimes) and corresponding duties, especially with an eye to procedures and standards of evidence sufficient for adjudication;
2. Reparations for victims and persons affected by losses or damages;
3. Adjudication, including prosecution of duty holders to establish personal liability, state obligation, state liability, state responsibility, war crimes, crimes against humanity, etc.;
4. Reform of abusive institutions;
5. Dialogue and reconciliation between and among parties, including national reconciliation, in an effort to uphold the other efforts of transitional justice.

Transitional-justice processes can take years or decades to complete, and the political dimensions of institutional reform, dialogue and prosecutions, whether or not they result in amnesty, complicate agreements among the parties involved. However, of the five transitional-justice processes, most agreement is found around two closely linked, if also interdependent objectives: reparation of victims and national reconciliation.

HLP rights deprivation and its restitution also have figured in the serial uprisings and some TJ processes across the MENA region since 2011.[54] Yemen's National Dialogue and Restitution of Land Commission had developed an ambitious transitional-justice process to address HLP issues arising from the violations

under previous governments. Despite ongoing conflict, those transitional-justice mechanisms and international supporters continue to anticipate Yemen's recovery.

Libya's Transitional Justice Law 29/2013 was adopted in 2013, although without fully operationalising the associated Fact-finding and Reconciliation Committee. That law focused primarily on violent crimes against physical and natural persons, but Article 28 deferred the issue of HLP violations and restitution to subsequent legislation. The [draft] Libyan Constitution [of 29 July 2017] provides for TJ measures in Chapter Eleven on Transitional Measures. Its Article 181 guarantees that "The State is committed to applying TJ measures and promulgates a law regulating truth seeking, reparation, accountability, accountancy and examination of institutions." Apart from defining the scope of TJ functions, the question of the temporal scope—i.e., the start date of cases to consider—has been deferred to future TJ processes.[55] (See also discussion of cut-off dates for claims in TJ processes below under **Principle 2** in response to the question: ***How long do refugees and DPs retain restitution rights?***

HLP restitution issues, when left unresolved, risk to flare again at any time. Like in peacekeeping efforts,[56] land restitution in transitions has proved crucial to larger questions of national reconciliation, which TJ ultimately seeks. Implementing the Principles should be viewed in that light, while appreciating the Principles' contribution to the longer-term stability and legitimacy of the State.

Institution building, development and reform – Building, developing and/or reforming institutions,[57] including informal institutions, greatly enables restitution efforts. Applying the Principles in planning the restitution process and determining the functions of related institutions engaged in restitution can provide a basis at the critical design phase.

This long and complex process calls for the greatest-possible degree of inclusion and coordination among concerned institutions and their constituents. (See **SECTION III: Overarching Self-determination Principle** of implementation and **Principle 14: Adequate Consultation and Participation in Decision Making** below.) The Principles can help develop the needed "big picture" of HLP restitution and, hence, coordination over a wide scope and long term makes essential the policy-coherence and harmonization of humanitarian, development and human rights approaches reflected in the Principles.

Traditional dispute-resolution processes – Resolution mechanisms that are based on customary law or tradition also may provide solutions to the deprivation of HLP rights. The Pinheiro Principles will be especially relevant in countries where formal institutions are weak or ineffective and where, in practice, land relations are mostly governed by customary law.

That may pose a special challenge to HLP restitution, especially due to the lack of formal documentation to certify HLP tenure. Traditional and customary tenure systems coexist with formal and statutory HLP systems in each of the countries across the MENA region.[58] Restitution of HLP rights may rely heavily on informal means of verifying HLP rights claims. (See below in **Section V. Legal, policy, procedural and institutional implementation mechanisms - Principle 15. Housing, land and property records and documentation**.)

Voluntary repatriation/return agreements and operations – Coordinated voluntary repatriation/return operations and their underlying agreements also can include explicit HLP restitution provisions for returnees. The Principles can be used as an important and convenient source of international standards supporting the inclusion of HLP restitution within current and future voluntary repatriation and return plans and their implementation.

Natural and human-made disasters – Natural disasters, including earthquakes (e.g., Pakistan, 2005), tsunamis (e.g., Asia, 2004), storms and floods (e.g., New Orleans, 2005; Caribbean Islands, 2017), and construction or failure of dams (Kenya, 2018) often result in the large-scale displacement of people from their homes, lands and properties. In some settings, a disaster response also may arbitrarily and/or unlawfully prevent the displaced from returning to their homes. The Pinheiro Principles—covering *all* DPs, including those forced to flee their homes due to disaster—can serve as standards supporting the rights of disaster-affected populations to return to and recover their former homes and lands.

Complex emergencies – A complex, multiple or multi-faceted emergency is a major humanitarian crisis that is often the result of a combination of political instability, conflict and violence, social inequities and/or underlying poverty, but also one that may coincide with an environmental disaster. Such a situation may involve serial displacements and for varying reasons. The MENA region continues to pose overwhelming challenges, with multiple and complex emergency situations on an unprecedented scale.

After the Qadhdhafi government fell in 2011, civilians in Libya continued to suffer as a result of conflict, instability, political fragmentation and a troubled economy. In Yemen, a civil war accompanied operations by both opposition and pro-government forces. Those developments combined in causing new displacement, following decades of dispossessions and displacement by the previous government. While the country simultaneously faced public health crises and hovered on the brink of famine, 22.2 million people, or 81% of the population, were in need of some form of humanitarian assistance or protection.

The entire MENA region has been referred to as a complex emergency, with 12,000 persons displaced each day in 2017.[59] As a result, many DPs remain unable to return to their original homes and lands. The Pinheiro Principles provide a basis for ensuring that those displaced due to conflict, food crisis or disaster are treated equitably, and that all categories of affected persons are able to exercise their HLP-restitution rights when circumstances so warrant.

Harmonizing with global policy frameworks – The Pinheiro Principles will be useful in addressing a range of global policy frameworks developed and negotiated to overcome some of the common challenges to statecraft, some of which share key characteristics, caused by either internal or external circumstances. These include policy frameworks involving HLP issues in the context of:

Protracted crises: While no universally agreed definition of the term exists, protracted crises can arise from multiple underlying causes: recurrent human-made and/or natural disasters; conflict and/or insecurity; weak governance; unsustainable and vulnerable livelihood systems; poor food-security outcomes; agricultural failure; limited public and/or informal institutional capacity to respond to or address critical issues. However, the absence of one or more of the characteristics outlined below does not necessarily mean that there is not a protracted crisis situation.[60]

International assistance efforts have evolved to adopt an approach of "working *on* the crisis," rather than merely "working *in* a crisis."[61] In the 2014 crisis in Gaza, local and UN assessments[62] noted that real progress could happen only if a political solution to the siege of Gaza could be found along with a (re)unification process of West Bank and Gaza under a unity government of the Palestinian Authority, harmonizing institutions, capacities, public services and governance. Therefore, the short-term and urgent employment needed could make sense when—and only when—it aligned with institution-building, state-formation and sustainable development objectives.

Fragile states – The peoples of the MENA region are among over-4.1 billion people living in 46 countries rated as high or very high risk of humanitarian crisis as of 2016.[63] Among them, five ranked among the ten worldwide with the highest vulnerability.[64]

The Busan Process begun in 2011 and the New Deal for Engagement in Fragile States, saw formation of the G7+ Group of Fragile States and initiated the International Dialogue on Peacebuilding and Statebuilding, which brings together the member states of the G7+ and the OECD. The New Deal's Peacebuilding and Statebuilding Goal 4 emphasizes the importance of "laying the economic foundations to generate employment and improve livelihoods" as part of its wider peacebuilding and state-building agenda.[65] Consequently, UN specialized organizations also have included fragile situations in their priorities for their Programme and Budget.

Conflict prevention: The lack of HLP-rights restitution from past instances of violation and deprivation have factored in new and ongoing conflicts, including those predictably resulting in further dispossession and displacement. The measures set out in the Principles could serve as a warning to avoid the deprivation of HLP rights through dispossession, destruction and displacement requiring remedy. They may serve as a reference for restraining the State and third parties to prevent such violations that accrue further obligations on the State to make restitution for HLP victims.[66]

State formation: Institution building within the process of state formation should align with the Pinheiro Principles, whereas the emerging state jurisdiction corresponds with the territory in which historic HLP rights violations have taken place and remain subject to restitution as a state-formation priority, grounding a measure of well-being for citizens and legitimacy of the new State. Thus, HLP issues in Palestine, Western Sahara and Cyprus form a cornerstone of that larger pursuit of state formation over the long term. HLP restitution resonates with the core "equal justice under law" principle of democratic States envisioned in the ultimate outcomes of state-formation struggles.[67]

Reconstruction: The functions of territorial planning and reconstruction are not only spatial and physical in nature, but also involve social dimensions. Their design and implementation bear tremendous social consequences. Applying the Pinheiro Principles as a cardinal point of reference in reconstruction could ensure that, at once, planning, construction and governance take into consideration the legal, political and social dimensions of the process and its outcomes. The Pinheiro Principles, used as a tool of the trade in reconstruction, hold the promise that equitable outcomes accompany the reconstruction process and compensate for habitual shortcomings in essentially technical approaches.[68]

The 2030 Sustainable Development Agenda – The restitution effort must take the situation of refugees and DPs into account within the current and longer-term development objectives of the country, as well as the global 2030 Agenda. Several principles, Goals, Targets and indicators relate to HLP restitution.

The *Transforming our World* resolution asserts that the Sustainable Development Goals (SDGs) address the right to self-determination and measures to end colonization and foreign occupation.[69] SDG indicator 1.4.2 seeks to measure the level of secure tenure enjoyed in each country. Goal 5 on gender equality accompanies Target 5.a on women's improved access to, and control over land and natural resources. Goal 11, on inclusive, safe, sustainable and resilient cities and human settlements, accompanies several Targets and indicators related to HLP-restitution processes. The entire 2030 Agenda is an articulation of sustainable development framework within which HLP restitution should take place with a view to long-term positioning, coherence with global policy commitments and related State obligations.

In all of these global policy scenarios, appropriate responses require looking beyond the crisis, in order to effect peace and security, sustainable development and human rights in the long run. The need for HLP restitution may arise from any combination of the above situations. Reconstruction and rehabilitation of destroyed public infrastructure, private homes, productive assets, factories, fishery and agricultural means of production need to be contextualised in longer-term transformation of the socio-economic life of the affected territory. As discussed below in **Section V. Legal, Policy, Procedural and Institutional Implementation Mechanisms**, this requires a thorough political economy analysis of the situation before HLP restitutions can translate into durable solutions.

Common Questions

Who is responsible for implementing housing and property restitution rights?

Ultimate responsibility for securing HLP rights rests with the directly concerned State and its organs, including central and local government. This is, of course, particularly true when the State and its representatives are directly liable, whether by commission or omission, for the displacement and HLP losses, costs and damages. When displacement is caused by non-State actors, (guerrilla groups, insurgents, militias, private companies, international financing institutions, etc.), the jurisdictional States in which the displacement took place and in which those displaced hold HLP rights also remain legally responsible for ensuring restitution.

At the same time, non-State actors and extraterritorial States responsible for any crimes or human rights violations leading to HLP dispossession, destruction or forced displacement may also be liable for these acts under international human rights law, IHL and/or international criminal law. However, the relevant authorities of the jurisdictional State would have to initiate or allow processes to hold those parties accountable. In situations of transitional governance, where the UN, regional interstate organization or coalition of States is exercising effective powers of State (e.g., Cambodia, East Timor, Iraq, Kosovo, South Sudan), the transitional authority concerned would maintain primary responsibility to implement international human rights law, as provided in the Principles.

Are the Pinheiro Principles legally binding?

The Principles are not a treaty or a formal law and, thus, do not have the same legally binding nature of such texts from which they are derived. Although UN Member States participated in the deliberations that produced the Pinheiro Principles, the Principles were not subject to adoption or ratification by States. Nevertheless, the Principles are based in binding human rights treaty provisions and general principles of international, regional and national law. Therefore, as a text declaratory of international law, the Principles do hold *persuasive authority*.

The Principles were prepared by leading legal experts in the relevant fields and were formally approved by an official United Nations human rights body, the Sub-Commission on Protection and Promotion of Human Rights, which was accountable to the UN Commission on Human Rights (UNCHR), the highest human rights policy-making body of the United Nations, and its member States.

How are the terms "arbitrary" and "unlawful" to be understood?

References to a certain act or omission using the adjective "arbitrary" and "unlawful" are shorthand expressions found in human rights law, meaning that it contravenes or fails to comply with the normative standard in question. Generally, an arbitrary act is one with no legal (or lawful) basis and is without

normative justification. An unlawful act is one that is clearly contrary to the relevant law concerned, which can include both national and international legal standards.

The arbitrary and/or unlawful nature of the displacement is determined also in international law pertaining to the human right to adequate housing (HRAH). Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), States parties[70] are obliged to apply set criteria for an eviction to be lawful. Any displacement or eviction is "unlawful" and "arbitrary" its nature and definition (i.e., "forced eviction") if it does not meet each of the following prerequisites, ensuring:

(a) An opportunity for genuine consultation with those affected;
(b) Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
(c) Information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
(d) Especially where groups of people are involved, government officials or their representatives to be present during an eviction;
(e) All persons carrying out the eviction to be properly identified;
(f) That the displacement or eviction not take place in particularly bad weather, or at night, unless the affected persons consent otherwise;
(g) Provision of legal remedies;
(h) Provision, where possible, of legal aid to persons who need it to seek redress from the courts;
(i) That the displacement or eviction not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or productive land is available and accessible.[71]

In determining whether displacement is either arbitrary, unlawful, or both, due regard must be paid to both the terms of municipal and national laws, together with the relevant international laws binding on all organs of the State concerned. It should be noted also that certain laws can be implemented in an arbitrary manner and that national laws sometimes are arbitrary in character.[72]

Must the right holder return to the HLP in question before restitution?
See Common Questions under **Principle 2: The Right to Housing and Property Restitution** below.

What are some of the key lessons learnt in dealing with restitution challenges?
The past few decades have borne witness to a growing number of efforts—both locally and internationally driven—to manage the complexities of HLP restitution. Some of the key lessons learned during these processes include:

- It is desirable to include restitution rights directly within relevant peace agreements, Security Council (UNSC) resolutions and voluntary repatriation/return agreements;
- Restitution competencies within staffing structures of post-conflict peace operations can make positive contributions;
- Early, appropriate and integral planning is needed to deal with restitution concerns and to determine the applicable legal and policy framework;
- Peacekeepers have an important role to play in securing restitution rights, as they may be required to perform law-and-order functions, secure housing and property records and protect public officials and humanitarian aid workers implementing restitution programmes, as well as returnees and DPs;
- Ignoring the restitution demands of returnees tends to aggravate rather than reduce tensions or violence;

- Restitution remains equally important for those who choose not to return; and
- Awareness is growing about HLP restitution as a vital contributor to economic and social stability, as well as broader reconciliation efforts within peace-building efforts.

What is the relationship between "restitution" as a legal remedy and the choice of "durable solution"?
HLP restitution practitioners should distinguish between durable solutions and legal remedies. Durable solutions may include return, local integration, resettlement to a third location, onward migration, temporary repatriation, or other option. Practitioners have an important role to play in ensuring that refugee and DPs make decisions freely and based on prior and accurate information known to them. (See discussion of free, prior and informed consent under **Principle 14: Adequate Consultation and Participation in Decision Making** below.)

Thus, the refugee or displaced person has the right to know that restitution rights are not affected by her/his voluntary choice of solution. Refugees and DPs choosing not to return maintain their right voluntarily to sell, exchange or lease restored properties. Such disposition of the property may be needed to generate an income that can contribute to local integration, resettlement or other solution. Exercising the right to HLP restitution may be the first step in restoring a degree of autonomy and dignity to persons reduced to poverty and dependence due to their losses.

What about economic migrants?
In general, economic migrants are those persons who have left a former place of residence for exclusively economic reasons. While some limited exceptions may apply, persons who were not forced to move by well-founded fear of persecution or other threat, but otherwise have migrated to another location or another country, are not a protected group under the Pinheiro Principles. However, if economic migrants otherwise become the victim of dispossession or displacement in clear violation of their human rights, the Principles would apply to them like any other affected person or group, regardless of migration, residency, citizenship or other civil status.

Useful Guidance

Aursnes, Ingunn Sofie and Conor Foley. "Property Restitution in Practice: The Experience of the Norwegian Refugee Council," April 2005, at:
http://www.globalprotectioncluster.org/_assets/files/tools_and_guidance/housing_land_property/By%20Themes/HLP%20Restitution/Property_Restitution_in_Practice_2005_EN.pdf;
International Council on Human Rights Policy, *Negotiating Justice? Human Rights and Peace Agreements* (Geneva: ICHRP, 2006);
Leckie, Scott. "Housing, Land and Property Rights and the Quest for Peace: Guidance for Peace Mediators" (Melbourne: Displacement Solutions, 2008);
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McHugh, Gerard. *Integrating Internal Displacement in Peace Processes and Agreements* (Washington: United States Institute of Peace (USIP), 2010);
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Williams, Rhodri, "The Pinheiro Principles take a licking (and keep on ticking?)," *TerraNullius Weblog* (18 November 2010), at: https://terra0nullius.wordpress.com/2010/11/18/the-pinheiro-principles-take-a-licking-and-keep-on-ticking/.

HLP restitution after displacement in the context of natural disasters or development projects:

ECtHR. *Akkus v. Turkey*, Application No. 19263/92, Judgment of 9 July 1997, at: https://eu.vlex.com/vid/case-of-akku-v-564971978;
Operational Guidelines on Human Rights Protection in Situations of Natural Disasters by the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, and their related Manual (2008), at: https://www.brookings.edu/research/human-rights-and-natural-disasters-operational-guidelines-and-field-manual-on-human-rights-protection-in-situations-of-natural-disaster/;
UN Human Rights Council. *Basic principles and guidelines on development-based evictions and displacement*, A/HRC/4/18, appendix, 2008, at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/106/28/PDF/G0710628.pdf?OpenElement.

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.

The enjoyment of property, held individually or in association with others, and adequate housing are human rights enshrined in the Universal Declaration and Human Rights (UDHR), Articles 17 and 25, respectively. In addition to this norm of customary law, States parties are also bound to respect, protect and fulfil the human right to adequate housing under Article 11 of ICESCR and Article 5(e)(iii) of the Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

When these human rights are violated, State governments should prioritize restitution as part of the affected person' entitled remedy to, and reparation for gross violations, including forced eviction, displacement, dispossession and other HLP rights. Restorative justice is urgent in any event, but especially in the contexts of stabilization, peace building, recovery, TJ, fragile State recovery, reconstruction and/or state building. Restitution is a distinct right, within the framework of reparation for victims of gross violations of international human rights law and serious violations of IHL and also is not prejudiced by a victim's pursuit of asylum, interim resettlement, acquisition of another nationality, or any other change in status.

Section II of the Principles is crucial to the understanding of the concept of HLP restitution from a universal human rights perspective. The term *restitution* refers to an equitable remedy (or a form of restorative justice) by which individuals or groups of persons who suffer loss, destruction or damage by a violation of their human rights are restored as far as possible to their original pre-loss or pre-injury position.

The right to a remedy for human rights violations has perhaps been best articulated in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law* (2006), which states that:

> "Restitution should, whenever possible, restore the victim to the original situation before the gross violations of human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship; return to one's place of residence, restoration of employment and return of property."[73]

The original notion and practice of reparations in international law began as a state-to-state arrangement in the aftermath of war, dating back to Rome's imposition of burdensome indemnities on Carthage (present-day Tunisia) after the First and Second Punic Wars.[74] In the modern era, the specific assertion of HLP rights restitution dates back to bilateral agreements following the First World War, as well as UN resolutions since 1945. Prior to the second half of the 20th Century, most "reparation" arrangements were still the subject of state-to-state agreements in which displacement victims were not a direct subject.[75] However, a comprehensive, individual right of refugees and DPs to HLP restitution has emerged since and, notably, the International Criminal Court formally provides two channels for the reparation of victims: (1) based on the recognition of victimization, through the Voluntary Fund for Victims and (2) through sentencing of convicted persons.

Principle 2.1 places this fundamental right to HLP restitution in the context of all refugees and DPs, regardless of any judicial pursuit of violators and regardless of the refugees' and DPs' chosen durable solution and place of residence.

Opportunities for Applying Principle 2

During the preparation of voluntary repatriation/return plans – Practitioners should include the concepts in *Principle 2* when drafting of any plans, proposals or other documents addressing the return of refugees or DPs to ensure explicit recognition of the HLP restitution *rights* of returnees. During related negotiations with States (and other agencies), restitution must be treated as the *preferred* remedy, although not tied solely to return as the only durable solution. Voluntary repatriation to one's own country without explicit provisions ensuring respect for the HLP-restitution dimensions of return has become increasingly difficult to justify, and likely will result in unfinished and incomplete solutions, as well as DPs' further deprivation and vulnerability.

When public officials resist the option of restitution – When users of the handbook encounter public officials reluctant to accept the right of refugees and DPs to restitution of their original housing, lands and properties, may be useful to refer to Principle 2 and the extensive normative basis supporting it. Reference to the considerable body of national, regional and international law recognising HLP restitution rights will strengthen arguments to encourage public officials to accept HLP restitution. For instance, in Bosnia-Herzegovina and a variety of other settings, the international community's insistence on the established principle of restitution was vital in ultimately changing originally very stubborn governmental opposition to any form of minority return that would undo years of attempted "ethnic cleansing."

A similar prospect may obtain in post-conflict, mega-projects or other displacements in the context of development in the MENA region. Entrenched political or ethnic bias might factor in the positions of public officials and civil servants to exclude restitution and return as durable solutions for refugees and DPs and communities. Such bias may have endured over millennia.[76]

Such hazards and prospects of lacking official commitment to these preferred and proven durable solutions in either central or local government spheres are among the reasons for these Principles grounded in the universal criteria and standards of international law. They form the basis of international cooperation in problem solving that upholds the three equal pillars and complementary purposes of the interstate system as expressed in the United Nations Charter: peace and security, forward development and human rights.

The sectarian and ethnic bias and discrimination motivating displacement or later emerging in the conflicts in Iraq, Libya, Syria and Yemen make restitution particularly vulnerable to residual bias toward groups of citizens entitled to their HLP restitution. This only compounds the complexity of the crisis and its resolution.

Indeed, numerous reports indicate that, despite a government commitment to HLP restitution of refugees and DPs in Iraq, local communities have engaged in violence against returnee families in certain areas, causing them to flee again.[77] Such reports underscore the fragility of the situation for returnees and the risks of a larger-scale return. These incidents make many DPs apprehensive about returning home, preferring to wait for a more-secure future, no matter how difficult their current situation may be. In such cases, the positive role of community leaders, public officials and their institutions espousing the Pinheiro Principles can be vital in creating and maintaining an environment conducive to HLP restitution.

When assisting states to legislate on restitution issues – An increasing number of States have undertaken, or are engaging in legislative efforts in support of HLP restitution. Recent examples include governments of Georgia, Albania, Bosnia-Herzegovina, South Africa, Lebanon and Iraq, among others. Legislative drafting efforts provide a good opportunity to present the Pinheiro Principles to the drafters involved and encourage them to use this Handbook as a basis for eventual restitution laws that also envision the State's long-term stability.

When debating compensation versus restitution – If the government(s) concerned fail to champion just, satisfactory and realistic compensation proposals to allow refugees or DPs to exercise their HLP restitution rights, other practitioners still should aim to ensure that the contents of Principle 2 are taken fully into account. That is especially required of UN Charter-based specialized organizations. In some instances, it may be advantageous to consider compensation in lieu of restitution when compensation, as an alternative to restitution, is clearly the expressed wish of the refugees or DPs concerned, and when return-based restitution would "create a burden out of all proportion to the benefit deriving therefrom."[78]

Conversely, all parties must exercise great care to ensure that such norms are not used to prevent refugees' and DPs' legitimate return and the exercise of their HLP restitution rights.

Common Questions

How long do refugees and DPs retain restitution rights?

The starting point of HLP restitution processes is one of the two principal dilemmas (like resolving root causes), as discussed in the Introduction. Some refugee and displaced populations have been physically unable to access their original homes for many years and, in some cases, decades. Though no simple, precise and universal answer can satisfy the question of the number of years that restitution claims remain valid, several legal points can guide. The chronological starting point of the restitution arrangements needs to be determined as a matter of law and policy in each HLP restitution case. This can become a subject of national debate, as it has been in the determination of TJ statutes in Libya, Tunisia and Yemen.

These Principles affirm that no government or other authority can easily justify arbitrary cut-off dates for victims to submit claims. Where displacement and/or dispossession has resulted from the conduct of war crimes or crimes against humanity, the corresponding liability and victims' rights, theoretically, are not subject to a statute of limitations. In the MENA region, however, only four states have ratified the relevant Convention on the subject: Kuwait, Libya, Palestine and Tunisia. (See **MENA State Treaty Ratification Status** in Annex.)

Other factors might impede judicial remedies. Limited resources, institutional capacity, international cooperation and assistance, or other constraints may force practical limits on the efficient processing of claims.

Principle 3: The Right to Non-discrimination, **Principle 13: Accessibility of Restitution Claims Procedures** and **Principle 19: Prohibition of Arbitrary and Discriminatory Laws** (below) suggest that time limits for the submission of claims should not be arbitrary or discriminatory. Read together, Principles 2, 3, 13 and 19 make clear that States and their successive governments may not arbitrarily apply cut-off dates for outstanding restitution claims. Importantly, HLP restitution rights and claims do not lapse, even when unreasonable, disproportionate or unfair date restrictions are imposed.

Do the Principles apply only to housing and land, or does the term "property" also encompass other possessions or holdings?

The Principles are primarily concerned with restoring the rights of individual—or a community of—refugees, DPs and their households to HLP that they owned, lived in, rented or otherwise held rights over at the time of their displacement. However, they also refer to rights to properties used for personal, economic or commercial purposes, including agricultural land, that are to be restored. This would apply especially in instances where such possessory right to any HLP were temporarily or permanently lost, even if arbitrarily or unlawfully acquired by any party other than the holder of HLP rights at any stage of the displacement.

Must the right holder return to the HLP in question before restitution?

No. A HLP rights holder's physical absence complicates the claim, but does not diminish it. The right holder retains her/his HLP rights until the restitution or other consensual remedy of the violation is done. Likewise, the right holder's rightful heirs retain the rights to restitution of private property held individually or in association with others. In the case of leasehold tenure, the remedy may take the form of restitution or compensation for the duration of the lease arrangement in which the tenure was denied.

The inheritance rights under leasehold tenure may be subject also to the provisions of domestic law to determine the settlement of any claims.

Principle 2.2 is clear in asserting that housing and property restitution rights are not prejudiced by the non-return of those possessing these rights. As such, decision makers and practitioners must distinguish between remedies and durable solutions. Restitution rights are not affected by the voluntary choice of resettlement, local integration or other durable solution, as opposed to return; nor do they lapse merely because a refugee or IDP physically has not been able to exercise these rights. (Principle 13.4 below speaks to the need for the restitution process to be accessible for those outside of the country of origin.)

Does restitution necessarily mean re-possession of an original home?

No. While the return to, recovery of and repossession of one's original home should remain the core objective of any restitution process, in practice, remedy can take different forms depending on local circumstances. It is rarely a complete return to the *status quo ante*.[79] Any restitution process may involve a combination of return, negotiated tenure arrangements, facilitated sales of properties to which refugees did not wish to return, but over which they retained rights. Appropriate forms and amounts of compensation may be provided. Many possible scenarios can emerge within the context of a restitution process. However, the central principles remain:

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

(See discussion of restitution as an element of reparations below in **Rights to Remedy and Reparation** under **Principle 10: The Right to Voluntary Return in Safety and Dignity**.)

How do restitution and compensation relate to reparations?

No. Both restitution and compensation are distinct elements of an inextricable bundle of seven entitlements that, together, constitute "reparations" for gross violations of human rights or serious violations of IHL.[80] (See discussion of restitution as an element of reparations below in **Rights to Remedy and Reparation** under **Principle 10: The Right to Voluntary Return in Safety and Dignity**.)

It is important to caution that compensation never should be seen as a simple alternative to restitution when governments are hesitant to accept the return of refugees and DPs. It is the duty of governments, whether central or local, to implement HLP rights as organs of the State, whether the right holders chose physical return or not.

Although *both* restitution and compensation rights were enshrined in the Dayton Peace Accords ending the war in Bosnia-Herzegovina, the international community decided to focus solely on restitution and return, and did not use the mechanism foreseen by the Accords to fund compensation of destroyed property. The fund remained empty, as donors feared that to compensate the displaced for their HLP, without return and restitution, would consolidate the objectives of ethnic cleansing, hence, perpetuating the outcomes of internationally codified crime.

Although compensation issues are addressed later in detail under Principle 21, it is within Principle 2.1 where the dilemma over compensation, either in combination with restitution, or *in lieu* of restitution, first arises. While both restitution and compensation rights are enshrined within the text, Principle 2.2 indicates a clear preference for restitution as the *most-appropriate remedy for displacement*. States are

expected to *prioritise* restitution rights *demonstrably* and, therefore, not view rights to restitution and compensation as necessarily of the same—nor of sufficient—value when seeking durable solutions.

The Principles view efforts to secure return-based restitution must be explored and exhausted before determining any form of restitution to be impractical. This review should precede any effort at compensation-based solutions. Long-standing experience across displacement contexts has shown that cash-based compensation is less durable than restitution.[81]

At the same time, combined solutions of both restitution (to the original home, land and property) and compensation (to enable re-building or other replacement of a damaged or destroyed housing land and property, or reimbursement of lost rent income) may offer the most-durable solution to the plight of individual refugees and DPs and households. A remedy of compensation (in-kind and/or cash) may provide the best and most-desirable method to resolve outstanding restitution claims, as long as the criteria outlined above are fulfilled. (See also discussion under **Principle 21: Compensation** below.)

MENA Examples

However, the original Iraqi Property Claims Commission (IPCC), which the Coalition Provisional Authority of the US-led occupation established in 2004, addressed the large-scale HLP violations against Iraqi Kurds under Saddam Husain's Ba'athist Anfal Campaigns (1980–88).[82] Claimants were given the choice between requesting restitution or compensation for properties. Where victims opted for the latter, compensation was to equal the (replacement) value to the original house, land or property at the time the claim was submitted. The law further assigned the Iraqi State to pay out compensations.

In other cases involving population transfer, including ethnic cleansing, the restitution preference is clear and consistent with the international law prohibitions against demographic manipulation, colonization and partition of a self-determination unit.[83] For example, countless UNGA and UNSC resolutions have asserted that Israel's actions to change the physical character and/or demographic composition of the occupied Palestinian territories, including Jerusalem, are legally "null and void and must be rescinded in compliance with the relevant resolutions of the Security Council."[84]

In such a context of demographic manipulation, it follows that restitution for gross violations of HLP rights also may be legally required under binding and enforceable international law. That prohibition and the reparation rights of Palestinian forced eviction victims apply also in the case of tenants in the occupied territories, including Jerusalem, replaced by inhabitants from the nonindigenous demographic group. Similar prospects arise in the case of Western Sahara as a non-self-governing territory partially under Moroccan effective control. While reparation is the entitlement of victims of gross violations, including forced eviction,[85] mere compensation in such a case alone risks perpetuating the prohibited outcomes of a wholly illegal situation.

What is meant by "tenure" and "secure tenure"?

The term "tenure" originally derives from the concept "to hold" something. The Food and Agriculture Organisation of the UN (FAO) defines land tenure as: "the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land (including other natural resources such as water and trees). Housing and land tenure relationships may be based on written policies and laws, as well as on unwritten customs and practices."[86]

The relationships that constitute tenure of something can be diverse, multiple, flexible and change over time. Some types of tenure are: perceived tenure, customary tenure, occupancy, absence of eviction, borrowing, adverse possession, group tenure, looking after, unofficially recognized, officially recognized, expectation of ownership, intermediate ownership, off-register ownership, registered freehold.[87] (Various types of tenure are discussed under **Principles 5**, **6**, **7**, **10**, **12**, **13** and **15**.)

Although security of tenure is most commonly associated with the ownership (freehold tenure), it can include a wide variety of tenure arrangements where security-of-tenure rights are recognised. Secure tenure has been defined as:

> "a set of relationships with respect to housing and land, established through statutory or customary law or informal or hybrid arrangements, that enables one to live in one's home in security, peace and dignity. It is an integral part of the right to adequate housing and a necessary ingredient for the enjoyment of many other civil, cultural, economic, political and social rights. All persons should possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats."[88]

How does security of tenure relate to restitution rights?

Legal security of tenure is the principal regulatory means by which people can be protected against displacement, including forced evictions, related threats and other harassment against their occupation of land or residence. As one of the core elements of the human right to adequate housing, secure and legal protection of tenure—whatever legitimate form—should be sufficiently strong as to protect people against any form of arbitrary or unlawful displacement.

Users of the handbook can advocate ample interpretations of tenure rights and seek to ensure that all those who successfully enforce restitution rights also are accorded appropriate tenure protection before, during and after repossession. CESCR, the UNCHR and Human Rights Council have highlighted the obligation of States to ensure security of tenure for those living with vulnerable or precarious tenure of their land and housing.[89]

How does customary (traditional) law relate to restitution?

In many settings, customary land arrangements and law are equitable, familiar, widely accepted, far simpler to administer and more cost effective than formal, title-based systems. In the MENA region as well, HLP restitution practitioners may find themselves assisting in the re-assertion of HLP-restitution rights established under customary law.

Because many large-scale restitution challenges facing the international community have arisen in Africa, particularly in Sudan and countries in the Great Lakes region, the African continent has accumulated much HLP-restitution experience at addressing the role of customary, traditional or other non-formal legal arrangements. In Sudan, formal land legislation is well advanced in north of the country (including Darfur), while customary land arrangements are in place in southern Sudan and the Republic of South Sudan. Reconciling such differences and incorporating the human rights-consistent elements of customary or traditional land arrangements within the context of peace agreements and the constitutional framework is a complex undertaking.

Following a century of serial foreign occupations, droughts accompanying climate change and increasing land conflicts, the Darfur Land Commission (DLC) has assumed the challenge of balanced development and recovery of historic and traditional rights as set out in Article 20 of the Darfur Peace Agreement (2006). The DLC's mission is to achieve social peace and sustainable development along four aspects: (1)

the codification of rights, (2) development and common use of resources, (3) settlement for DPs and refugees, and (4) amendment and development of laws.[90] Each aspect has required a hybrid of traditional and formal norms and dispute resolution mechanisms.

Useful Guidance

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IOM. *Property Restitution and Compensation: Practices and Experiences of Claims Programmes* (Geneva: IOM, 2008), at: http://publications.iom.int/system/files/pdf/property_restitution_compensation.pdf;
Leckie, Scott, ed. *Returning Home: Housing and Property Restitution Rights for Refugees and Displaced Persons*, (London: Transnational Publishers, Vol. 1, 2003; Vol. 2, 2006);
Tubiana, Jérôme, Victor Tanner, Musa Adam Abdul-Jalil. *Traditional Authorities' Peacemaking Role in Darfur* (Washington: United States Institute of Peace, 2012), at: https://www.files.ethz.ch/isn/155469/PW83.pdf;
Unruh, John. "Land and Legality in the Darfur Conflict," *African Security*, Vol. 5, Issue 2 (2012), at: https://www.tandfonline.com/doi/abs/10.1080/19392206.2012.682474?src=recsys&journalCode=uafs20;
De Wit, Paul V. "Land Policy Development in Post Conflict Sudan: Dealing with Delicate Balances in a Fluid Environment," World Bank Conference on New Challenges for Land Policy and Administration, Washington, 14–15 February 2008, at: http://siteresources.worldbank.org/INTIE/Resources/475495-1202322503179/Draft_deWit_paper.pdf.

SECTION III. OVERARCHING PRINCIPLES

The overarching principles in human rights treaty law are provided here as derived from both Human Rights Covenants (ICCPR and ICESCR), as well as other human rights instruments and the Charter of the United Nations. The overarching principles answer the question "how" the State is to respect, protect and fulfil specific rights guaranteed under the Covenants. The corresponding method of operation required of the treaty-bound State follows the logical order of the Covenants, **Section III** establishes the overarching principles of implementing human rights, in general, and **Section IV** then refers to the specific human rights to fulfilled in the restitution of HLP rights.

All practitioners should monitor closely the application of these overarching principles and general obligations re-affirmed in Principles 3–9 throughout all stages of the HLP restitution process. They should reference them whenever efforts ignore or undermine these principles in the effective exercise of HLP restitution. During the initial stages, when relevant procedures and institutions are under negotiation, practitioners should pay careful attention to ensure that these overarching principles are duly considered and reflected within the agreements and institutional, legal and operational frameworks developed. It is equally important that those persons and institutions applying the Principles should certify that these overarching principles of human rights implementation pervade every phase of the HLP restitution process. This is particularly important to the application of the issues addressed in operational **Principles 10–22 (Sections IV and V)** below.

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.

Non-discrimination is an overarching principle of human rights treaty implementation and a non-derogable human right[91] that must not be breached under any circumstance, including in times of public emergency or war. Non-discrimination is perhaps the most well-established among the fundament human rights tenets, distinguished as one of only two human rights principles explicitly cited in the 1945 UN Charter.[92] The first UN human rights treaty, the International Convention on the Elimination of All Forms of Racial Discrimination (1965), originally proposed by an initiative of Egypt,[93] is dedicated to eliminating

> "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin [that] has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."[94]

The overarching principle and human right to non-discrimination is protected in virtually every major international human rights instrument, including the Universal Declaration of Human Rights (UDHR),[95] the ICESCR[96] and ICCPR.[97] Discrimination is prohibited under the Convention on the Elimination of All Forms of Discrimination against Women (CEDaW),[98] as well as the Convention on the Rights of the Child (CRC).[99] Discrimination is similarly prohibited under Article 2 of the African [Banjul] Charter on Human and Peoples' Rights[100] and both iterations of the Arab Charter on Human Rights (ACHR).[101]

Principle 3 begins with a recognition of the overarching principle of—and distinct right to—non-discrimination. It guarantees equal treatment of refugees and DPs both in *de jure* (legal) and *de facto* (practical) terms.

In HLP restitution, of course, this right is crucial, given the many instances of displacement rooted in intentional discrimination against certain racial, ethnic, linguistic, national, political and religious groups, especially minorities. When forced eviction and displacement forms a discriminatory pattern, those prohibited acts will have the cumulative result of actually *strengthening* the future HLP restitution claims.

The patterns of cases in the MENA region reflect institutionalized material discrimination against distinct groups that threatens their physical existence in the State territory. Some cases involve *in situ* dispossession, while others combine forms of discrimination that involve dispossession, destruction and displacement that may rise to the level of ethnic cleansing, population transfer, apartheid, the denial of a people's self-determination and/or depriving them of their means of subsistence.[102]

When implementing restitution programmes, upholding the right to, and overarching principle of non-discrimination is vital to developing durable solutions and assuring that the most-marginalized groups and vulnerable individuals benefit from HLP restitution on an equal footing. The Pinheiro Principles recognise also that refugees and DPs must not be discriminated against in any sphere because of their uprooted status. States must guarantee equal justice and protection under law.

Strict compliance with the non-discrimination principle should ensure that no one and no group entitled to HLP restitution is prevented from securing these rights in practice on the basis of arbitrary or inequitable treatment as a member of a group.

Opportunities for Applying Principle 3

Analysing the causes of displacement – To carry out restitution of HLP or redress any gross violations of human right or serious violations of IHL, the standards for remedy and reparation[103] call for the process to include recognition and repair of *the causes* of the depravation. Cumulative standards for alleviating crises**,**[104] including these Principles, require a proper assessment of any discriminatory practice as a foundational step. A typical underlying cause of deprivation, in general, and HLP rights violations, in particular, involves discrimination of one form or another.

It is increasingly rare for national legislation to enshrine discrimination explicitly. Nevertheless, discriminatory laws potentially affect restitution rights force in a range of countries. Meanwhile, ostensibly neutral laws may be applied with discriminatory effect. Other causes of substantive/material discrimination may originate outside national law, but may affect a particular group before, during and after displacement, as well as in the context of return and/or HLP restitution.

When reviewing the causes of displacement and the public and/or private forces responsible for it, practitioners should identify any sources of discrimination and related patterns that might motivate the displacement. Particular attention needs to be paid to ethnic, religious and other motivations hindering the proper enforcement of non-discrimination provisions of standing law.

MENA Examples

Where restitution arrangements or laws exist within a country, implementation in practice might actually favour one ethnic group over another. That was originally the case in the Iraqi Property Claims Commission (IPCC), established by the Coalition Provisional Authority, in 2004,[105] which sought restitution of only one ethnic group dispossessed and displaced under the previous government.[106] Among the shortcomings was its narrow scope of application,[107] as well as its lack of reference to international law standards and human rights obligations of the occupied State.

In northern Iraq, the Yazidi community has been victim of discriminatory policy that has violated their HLP rights over decades. In 2017, an effective information and advocacy effort by UN-Habitat resulted in the unprecedented issuance of occupancy certificates for the owners of houses rehabilitated in al-Sinuni, which supported the Yazidis' long-standing property claims.[108]

A discriminatory pattern of HLP rights violations may indicate institutionalised discrimination of a scale and nature consistent with war crimes or crimes against humanity. Conditioning HLP tenure on "nationality," or adherence to a particular group within a State's jurisdiction or territory of effective control may meet the definition of apartheid, a crime against humanity.[109] As noted above, those prohibited acts will have the cumulative result of actually *strengthening* the future restitution claims of those whose rights have been violated.

In the case of Palestine, institutionalised material discrimination affects HLP rights directly through "national" institutions recognised in law as the implementers of housing and development policy and its implementation throughout the state of Israel's jurisdiction and territory of effective control. Those institutions—primarily World Zionist Organisation/Jewish Agency, Jewish National Fund and their affiliates—are chartered to discriminate to favour of persons claiming "Jewish nationality," at the exclusion and expense of indigenous others.[110]

The remedy for such gross violations, war crimes or crimes against humanity depriving HLP rights also invokes the cumulative entitlements of reparations. Despite the large scale of such violations, historic experience cautions against the pursuit of mass or collective reparations as a remedy, as often they do not achieve the preferred HLP restitution outcome, but favour cash compensation arrangements (thus foreclosing options of return and restitution). Also, because of their scale, compensation typically flows through institutions operating on behalf of the victims, which sometimes subordinates refugee and displaced person's rights and interests to institutional preferences and interests, and diminishes the entitlements ultimately received.[111]

Institutional reform – In the process toward restitution and future respect, protection and fulfilment of HLP rights, public institutions may require reform of their roles and functions to comply with the overarching principle of non-discrimination. Training, or re-training, of personnel may be required to operationalise the principle. That would be consistent with the "rehabilitation" and "satisfaction" called for as an outcome of the reparation framework. Law training and educational material at all levels calls for remedies to the former stigma or defamation.[112] (See **Principle I: Scope and Application**, above, on training opportunities using the Pinheiro Principles.)

Monitoring restitution programmes – It will also be important for users of the handbook to monitor restitution programmes to ensure that any application of these measures is not discriminatory. That should minimize the tendency in some cases to accord restitution or return rights only to certain ethnic or religious groups to the detriment of others.

In the case of HLP restitution in Iraq since 2003, international organizations and local observers noted discriminatory patterns in returnees' access to their property, since groups that are an unwanted minority may not be allowed to return at all, or may find upon return that their property has been destroyed or occupied.[113] When such cases arise, the Principles could serve as an independent normative framework to be used in supporting the non-discriminatory application of restitution laws.

Filing and enforcement of restitution claims – Diverse forms of discrimination also can take place during the actual restitution claims process, with certain groups facing unjustifiable obstacles to the filing of claims, such as language, education level and other barriers. The enforcement of validated restitution claims may be uneven in cases where only members of a certain ethnic group succeed in implementing their claims, while others are prevented from doing so. In some cases, arbitrarily imposed deadlines for submitting restitution claims also might be designed to favour one ethnic group over another. The Principles can be used as a checklist to ensure fairness in such processes.

Common Questions

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

Already the international community has played an indispensable role in assisting in the repeal of discriminatory laws used to justify the non-enforcement of restitution decisions in favour of returnees. Such was the case in Croatia, Bosnia Herzegovina and Kosovo, where a series of pre-war and mid-conflict laws were repealed the international community was directly involved.[114]

Wherever the concerned States lack the institutional, technical and other capacity to manage a crisis or its aftermath, UN agencies and specialized international NGOs are the most-likely parties to assist. The

UN agencies should monitor discrimination in practice, and may need to advise government partners on the need for non-discrimination in HLP restitution processes.

In Iraq, the local and global Protection Cluster coordinates and advises on the implementation of the cluster approach to protection in the field, supports protection responses in non-refugee situation humanitarian action, as well as leads standard and policy setting relating to protection in complex and natural disaster humanitarian emergencies, in particular with regard to the protection of DPs.

More detail on the role of the international community is found below under **Principle 22: Responsibility of the International community.**

Do judicial bodies ever address these issues?

Yes, increasingly so. In other regions, Kosovo's semi-judicial Housing and Property Claims Commission frequently has referred to acts of discrimination as the basis for some of its decisions reaffirming HLP restitution rights. HLP-restitution cases in Nepal and Tanzania have overturned discriminatory practices against women, denying their full restitution on the basis of their gender.[115]

The initial Iraq Property Claims Commission (IPCC)—renamed in 2006 as the CRRPD[116]—circumvented the national judiciary to establish special chambers to rule on HLP-restitution claims for Kurdish victims. The scope of victims and types of cases received then expanded with clearer links to the national court system. In late 2009, the Iraqi Parliament adopted a new law[117] to overhaul the CRRPD process, which by then had adjudicated only about 25% of claims. The new law increased the number of appeals chambers from one to three, empowered the Judicial Committees to decide to return the property or pay compensation and brought forward the HLP valuation dates to the time of decision, and appeals were brought under the competence of the Federal Cassation Court. The new law also replacing CRRPD with a new commission called the Property Claims Commission (PCC).[118] It also extended jurisdiction to cover HLP claims of victims since 2003, which overcame the selective and discriminatory nature of the original ICCP.

Regional and international judicial bodies also have been able to adjudicate claims previously failed due to discrimination in domestic systems. Although providing an example outside of the MENA region, on several occasions the UN Human Rights Committee (CCPR), under its Optional Protocol, has determined that the denial of restitution or compensation rights to property claimants violated the equal treatment and non-discrimination provisions of ICCPR.[119]

Are those without fixed abodes guaranteed restitution rights?

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

However, violations still persist. Since Israel invaded and annexed the Naqab region of Palestine in 1948, the restitution of HLP rights remains an issue for originally Bedouin communities subject to population transfer and concentration there. Their traditionally pastoral lifestyle or status does not distinguish them

as more "indigenous" than the rest of the Palestinian people, the Naqab Palestinians' underwent a distinct process by which Israel to removed them from their land holdings in 1951–53 into an enclosure (*siyaj*). That process involved the destruction of some 108 villages and settlements, including seasonal habitations. That population, having the status of Israeli citizens, is nonetheless denied restitution of their HLP rights consistent with an ongoing policy of demolition and forced eviction.[120] Their customary land tenure has not been recognised by Israel as conferring any legal right of continued residence or usage and the traditional tenure holders are consequently at high risk of displacement also in the West Bank and Jerusalem.[121]

How can customary laws be used to prevent discrimination?

Customary law under many constitutions is exempt from the prohibition against discrimination. This exemption can make unjust and unfair customary practices unchallengeable before both secular and sectarian courts of law. However, the universal human rights principle of non-discrimination should prevail with the State's guarantee against bias such as that based on gender, ethnicity, tenure status (as just mentioned), or other arbitrary criterion.

In several cases in the MENA region, traditional leaders, including religious men, have advocated for non-discrimination and gender equality.[122] For example, some Islamic scholars[123] cite the Quranic injunction against discrimination to be fundamental and non-derogable, as enshrined in Surat al-Ma'ida:

ٱعْدِلُواْ هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَٱتَّقُواْ ٱللَّهَ إِنَّ ٱللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ.

وَٱذْكُرُواْ نِعْمَةَ ٱللَّهِ عَلَيْكُمْ وَمِيثَاقَهُ ٱلَّذِي وَاثَقَكُم بِهِ إِذْ قُلْتُمْ سَمِعْنَا وَأَطَعْنَا وَٱتَّقُواْ ٱللَّهَ إِنَّ ٱللَّهَ عَلِيمٌ بِذَاتِ ٱلصُّدُورِ ﴿٧﴾ يَا أَيُّهَا ٱلَّذِينَ آمَنُواْ كُونُواْ قَوَّامِينَ لِلَّهِ شُهَدَآءَ بِٱلْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَآنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُواْ ٱعْدِلُواْ هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَٱتَّقُواْ ٱللَّهَ إِنَّ ٱللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ ﴿٨﴾ وَعَدَ ٱللَّهُ ٱلَّذِينَ آمَنُواْ وَعَمِلُواْ ٱلصَّـٰلِحَاتِ لَهُم مَّغْفِرَةٌ وَأَجْرٌ عَظِيمٌ ﴿٩﴾ وَٱلَّذِينَ كَفَرُواْ وَكَذَّبُواْ بِآيَاتِنَآ أُوْلَـٰٓئِكَ أَصْحَـٰبُ ٱلْجَحِيمِ ﴿١٠﴾ يَا أَيُّهَا ٱلَّذِينَ آمَنُواْ ٱذْكُرُواْ نِعْمَتَ ٱللَّهِ عَلَيْكُمْ إِذْ هَمَّ قَوْمٌ أَن يَبْسُطُواْ إِلَيْكُمْ أَيْدِيَهُمْ فَكَفَّ أَيْدِيَهُمْ عَنكُمْ وَٱتَّقُواْ ٱللَّهَ وَعَلَى ٱللَّهِ فَلْيَتَوَكَّلِ ٱلْمُؤْمِنُونَ ﴿١١﴾

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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.

Despite the importance of HLP to women, most lack security of tenure, because of gender-biased laws that, at best, protect only married women. Globally, many legal systems do not protect women's tenure rights at all, are inaccessible to most women, or privilege customary law over statutory law. Legal and social pressures may deny women's equal HLP inheritance rights or common property upon the dissolution of a marriage or widowhood. Land and house titling systems often grant title to men rather than women, or require payment for land/houses that women cannot afford. Discriminatory lending or credit policies also may exclude women applicants. Without rights in, access to or control over HLP, women are generally excluded from household and community decision-making processes and, therefore, their interests and needs are unrepresented and disserved.[124]

Gender equality refers to the equal enjoyment by women, men, girls and boys of rights, socially valued goods, opportunities, resources and rewards. Equality does not mean that men and women are the same, but that their enjoyment of rights, opportunities and life chances are not governed or limited by whether they were born male or female. The right to equality between men and women is guaranteed in Article 3 of both ICCPR and ICESCR, as well as in the CEDaW. This right has been consistently interpreted to require the implementation of positive measures meant to remedy the effects of *de facto* or *de jure* discrimination on the basis of sex or social roles.

CCPR interprets States' corresponding obligations such that "The State party must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women." It notes further that "articles 2 and 3 mandate States parties to take all steps

necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions, both in the public and the private sector, [that] impair the equal enjoyment of rights."[125]

Consequently, under Principle 4, HLP restitution laws and processes not must refrain from discrimination; they must also ensure the right to equality of men and women, as well as equality between boys and girls in exercising the rights mentioned in Principle 4.1. That Principle uses the term "the equal right of men and women, and the equal right of boys and girls," which means that the right extends to children, as is consistent with the CRC, ratified by every State in the UN, except the United States of America.

Principle 4.2 also explicitly recognises that States should ensure that HLP-restitution programmes, policies and practices recognise *joint ownership rights* of both male and female heads of the household. This provision combats sex discrimination that may occur when only male "heads of households" are informally recognised as rights holders, when only men gain formal title to housing or other property, leaving women without legal control over what should also be treated as common property.

Restitution programmes should seek to implement a gender strategy where the *status quo* effectively discriminates against women's right to ownership, either in law or in practice. Conferring equal rights and/or joint ownership rights to women should *precede* displacement, but also remedially when restitution claims are considered by the relevant judicial bodies. (See also ***When conducting a gender analysis*** under **Principle 18: Legislative Measures** below.)

Principle 4.3 recognises the need to implement positive measures to ensure that restitution efforts are based on equal treatment. Such measures could include the design of special programmes aimed at assisting women and girls to submit restitution claims, gender literacy or gender-sensitivity training for officials entrusted with HLP-restitution matters, providing special outreach about restitution issues to women's organisations or networks, and/or providing special resources to households headed by single women so that they are also able to avail themselves of their HLP- restitution rights.

It is significant to note that the UN monitoring CEDaW observes how "discriminatory or otherwise inadequate legal frameworks, complex legal systems, conflict and post-conflict settings, a lack of information and sociocultural constraints can combine to make justice inaccessible," especially to rural women.[126] States party to CEDaW must ensure also that special programmes take into consideration—and seek to remedy—the particular discrimination, isolation, stigmatization and other deprivation of older women and widows. The CEDaW Committee also has interpreted State obligations toward rural women, including heads of household, living in conflict-affected areas, facing security concerns and further obstacles in enjoying their HLP rights.[127]

Most States in the MENA region are ratifying parties to CEDaW. (See **MENA State Treaty Ratification Status** in Annex).

Opportunities for Applying Principle 4

Developing gender-sensitive restitution programmes and procedures – Principle 4 can be used to build gender sensitivity into restitution programmes and procedures and ensure that women enjoy equal treatment with men in these processes, as well as benefit from special measures designed to achieve procedural and substantive equality. This means that the State and HLP-restitution partners should support special measures to enable women to achieve equality with men, including steps to ensure that women and men can experience *all* aspects of the restitution process on equal terms, including the eventual conferral of joint and equal HLP rights confirmed during the restitution process. Of course,

Principle 4 can be useful in the development of institutions, programmes and procedures long before, during and after displacement.

Monitoring women's housing and property restitution rights – Many women also may be unable to return home for fear of being tortured, raped or subjected to other forms of violence. Applying Principle 4 can help ensure that monitoring efforts at HLP restitution included coverage of any sexual or gender-based violence carried out by any party, particularly when this amounts to "persecution" under refugee law, or when it otherwise violates the rights of women returning to their homes "in safety and dignity."

Recognizing and ensuring women's effective roles in HLP restitution and reconstruction – Lessons learned from displacement and reconstruction reflect the needed human rights-based approach (HRBA) to include women's and affected persons' participation in decision making alongside competent authorities. That participation can be essential to the long-term habitability of the restored or replacement housing and the success of the rehousing effort, fulfilling each of the criteria for adequacy.[128] Practitioners have found also that women's participation early in resettlement arrangements, whether in post-disaster reconstruction, development-induced or punitive displacement, is essential to ensure the adequacy of design, spatial and security criteria.[129]

Working in countries with inequitable recognition of inheritance rights – Users of the handbook who are working in countries where women's inheritance rights are not recognised on equal terms to those of men, should disseminate Principle 4 widely and carry out training programmes designed to promote its application. They also can seek to uphold the Principles as an impartial normative standard, based upon existing human rights law, and carry out advocacy efforts designed to achieve equality in rights to property and inheritance.

Legal defence challenging gender-discrimination in HLP rights – Using the overarching principle of gender equality under binding treaty, HLP-restitution cases can prevail even within contexts of inequitable recognition of HLP rights. Examples are numerous in other regions, such as in Nepal and Tanzania, where courts have overturned discriminatory practices against women that prevent their full HLP restitution on the basis of their gender.[130]

Common Questions

What are the consequences of gender-discriminatory inheritance regimes?

Inheritance rights are always important, but particularly so following a conflict or disaster. In many post-conflict settings, it remains commonplace for widows to return to their original homes only to find them occupied by male members of the deceased husband's family who claim rights over the property based on prevailing inheritance practices. The consequences for women can be severe and lead to homelessness and landlessness, general housing and food insecurity, increased vulnerability to violence, social isolation and loss of social security.

A survey conducted in Gaza in 2006 revealed that women were variously constrained from claiming their inheritance rights. Some 60% of women were afraid to claim their inheritance out of fear from "family boycott," 13% lacked awareness about their rights, 10% claimed ignorance of the laws and procedures related to partition of inheritance, 7% for lack of resources to pay court costs, and 5% felt that they would face social criticism of a women who would "embarrass her husband."[131]

Many countries maintain both formal and customary laws, as well as practices that entrench unequal inheritance rights for men and women. It is important for users of the handbook to be conscious of the impact of existing inheritance regimes in areas where restitution efforts are to take place.

In which legal sectors are gender-discriminatory inheritance regimes most likely to be regulated?
Unfair inheritance (or succession) rights often can manifest with widows unable to exercise restitution rights effectively over an original home or land parcel. The types of statutory and customary laws regulating these practices can vary considerably from country to country, as well as from village to village, regardless of religious affiliation. The legal domains include norms concerning marriage, succession, family codes, personal laws, civil codes, laws on estates and wills, customary marriage arrangements and others. Users of the handbook should familiarise themselves with these in the country where they are working to determine any inequitable inheritance provisions.

Do traditional legal systems help eliminate or entrench discriminatory HLP regimes?
No single answer can answer this question in all situations, since the application of traditional legal regimes differs from pace to place. The various schools of Islamic law offer a wide range of legal methods and principles, allowing for great diversity of application. As required in international law, no State may allow domestic law to contravene the binding principle of gender equality under ratified treaty, and a State's reservation suggesting a lesser standard domestically may undermine the core principles of the treaty and be invalided when challenged. However, some traditional legal systems may offer greater equality than formal systems. Each case should be analysed individually against the universal standard and overarching principle of equality between women and men.

Meanwhile, the global practice of Islam, for example, contains solid interpretations (*ijtihad*) affirming, for example, that no text or prophetic tradition negates equal or greater inheritance of women and girls.[132] In this view, Islam's historic innovation of equitable gender treatment considers that the inheritance provisions in the Qur'ān constitute a minimum floor of women's entitlement, not a maximum ceiling.[133]

Interpretations of substantial equality also rest on Qur'ān passages, including:

> "Whoever does deeds of righteousness, whether male or female, while being a believer – those will enter Paradise, and not the least injustice will be done to them."[4:124]

وَمَن يَعْمَلْ مِنَ الصَّالِحَاتِ مِن ذَكَرٍ أَوْ أُنثَىٰ وَهُوَ مُؤْمِنٌ فَأُولَٰئِكَ يَدْخُلُونَ الْجَنَّةَ وَلَا يُظْلَمُونَ نَقِيرًا ﴿١٢٤﴾

سورة النساء

and

> "For Muslim men and women, for believing men and women, for devout men and women, for truthful men and women, for patient men and women, for humble men and women, for charitable men and women, for fasting men and women, for chaste men and women, and for men and women who remember God often – for them has Allah prepared forgiveness and great reward." [33:35]

إِنَّ الْمُسْلِمِينَ وَالْمُسْلِمَاتِ وَالْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ وَالْقَانِتِينَ وَالْقَانِتَاتِ وَالصَّادِقِينَ وَالصَّادِقَاتِ وَالصَّابِرِينَ وَالصَّابِرَاتِ وَالْخَاشِعِينَ وَالْخَاشِعَاتِ وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ وَالصَّائِمِينَ وَالصَّائِمَاتِ وَالْحَافِظِينَ فُرُوجَهُمْ وَالْحَافِظَاتِ وَالذَّاكِرِينَ اللَّهَ كَثِيرًا وَالذَّاكِرَاتِ أَعَدَّ اللَّهُ لَهُم مَّغْفِرَةً وَأَجْرًا عَظِيمًا ﴿٣٥﴾

سورة الأحزاب

Examples of traditional norms applied on the ground may result in equality, depending on the ethical standard of the actors and decision makers involved, and practices may vary widely from village to village

in a single country, regardless of religious affiliations. However, that is no reliable guarantee of a standard of gender equality, without also applying the human rights standard by which the State and its constituent organs are bound.

Are unfair gender-discriminatory inheritance practices ever changed in favour of equitable HRBA?
Global awareness of the problems associated with inequitable inheritance rights is growing and as a result, changes are taking place slowly in countries of every region. A notable example is post-conflict Rwanda, where, following the 1994 genocide, a loophole in the succession law left widows and female orphans ceding their inheritance rights to paternal uncles. Initiated by the Rwanda Law Reform Commission (RLRC), in conjunction with the Gender Monitoring Office (GMO), a lengthy joint effort together with the international community led Rwanda's Parliament to reform the law on inheritance and succession in 2016.[134] The legislation guaranteed equal inheritance rights to male and female children, creating a choice of property regimes upon marriage and allowing a wife to inherit her deceased husband's property, including in consensual unions. These changes take time to implement, but positive changes already have occurred in response to the need for equitable HLP restitution.

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Other Overarching Principles

Self-determination

Under common Article 1 of both Human Rights Covenants:

> "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
>
> All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."[135]

As CCPR observed, "This right entails corresponding duties for all States and the international community." [136] States parties to ICESCR have the particular obligation to ensure that the respect, protection and fulfilment of economic, social and cultural rights (ESCR) in the HLP-restitution process align with the inherent and inalienable human right of nations and peoples to self-determination. The overarching principle and, at once, human right of self-determination is also enshrined in the UN Charter,[137] Article 20.1 of the African [Banjul] Charter on Human and Peoples' Rights[138] and the ACHR.[139] Like all human rights obligations, the human right to self-determination imposes obligations on each State that are individual, collective, domestic and extraterritorial in nature. The denial of self-determination is considered to violate a peremptory norm of international law (*jus cogens*).[140]

A central issue related to the right to self-determination in the MENA region is the denial of that right to the Palestinian people. HLP rights violations over decades of Israel's population transfer and colonization of the country and its refusal to make reparations has been a core subject of protracted debate, discussions and countless UN resolutions, as well as a series of international armed conflicts since 1948. The control of land and territory, the right of refugee and IDP return and property restitution are central to the conflict and to the exercise of the Palestinian people's inalienable right to self-determination.[141]

The self-determination principle is particularly relevant when harmonizing the humanitarian, development and human rights approaches in operation so that the relevant domestic institutions, legal and operational frameworks play the leading role in determining policy direction and that the domestic institutions are enabled with the capacity to carry out their HLP restitution functions adequately within the criteria of human rights. Service providers in the field must be conscientious to support, but not to supplant the self-determined institutions, policies and solutions of the nations and peoples of the State, or their corresponding government functions in the central or local sphere.[142]

Opportunities for Applying the Overarching Principle of Self-determination

Conducting surveys, interviews, opinion polls, focus groups and other forms of inquiry – From the earliest stage of intervention, practitioners should regularly check their assumptions against the views and opinions of the parties to the HLP-restitution process before and after making decisions about actions to take that affect those parties. Priority should be given to the self-determination of refugees and DPs, consistent with the principle of free, prior and informed consent (FPIC) and the voluntariness of their return. That priority aligns with the purpose of the return and restitution processes in restoring violated HLP rights and with the explicit right of peoples and nations freely to "determine their political status and freely pursue their economic, social and cultural development."

Institution building, development and reform – Building, developing and/or reforming institutions,[143] including informal institutions, greatly enables restitution efforts. When HLP restitution practitioners respect and apply the overarching principle of self-determination in this context, they ensure that the target institutions are more durable after international parties withdraw. The institutions a sense of local ownership and reflect—rather than supplant—the convergent development priorities of the right holders and duty holders of the country. (See also ***Institution building, development and reform*** under **Opportunities for Applying Principle 1: Scope and Application** above.)

Common Questions

Does self-determination mean separatism or separation from the State?

No. That is not the primary objective. Separatism or separation from the territorial State are questions that arise when the State fails to carry out its human rights obligations to all its citizens, or otherwise fails to protect and serve citizens equitably.

States are typically assumed to represent the culmination and expression of self-determination by one distinct people, or of multiple peoples and nations together in one self-determination unit. The overarching principle and human right of self-determination means that the territorial State, as a matter of statecraft and good governance adhering to principles of in international law, represents equally and treats equitably each and every nation and people within its jurisdiction, in other words, a state for all its citizens. As provided in the UDHR, "The will of the people shall be the basis of the authority of government."[144] Therefore, the internal and external legitimacy of the State and its successive governments derives from the expression of that will and external self-determination claims do not arise.

In international law, only recognized peoples and nations hold the right to self-determination. Other minorities and communities do not. States also do not hold that right, but rather embody its expression through their political systems.

While the UN Charter begins with the words "We the peoples of the United Nations," and numerous international instruments enshrine those terms, international law has provided no unified definition of either "people," or "nation." Only "indigenous people" has a common working definition by virtue of indigenous peoples' distinct nature and role in the history of colonisation and decolonisation. Some distinct groups may encourage autonomy within a State as a means of balancing state sovereignty and group demands for self-government.

Who are indigenous people and do any reside in the MENA region?

Since the UN Human Rights System took up the task of clarifying the conditions and human rights of indigenous peoples in the world in the 1970s, much legal and deliberative work has sought to identify

them by definition and specific human rights dimensions. Through the Human Rights System and ILO processes, indigenous peoples have come to be identified as having four common characteristics:

1. A historic presence and continuity preceding and invasion, colonial process or wave of immigration and settlement, including the implantation of settlers, immigrants and their permanent settlements;
2. Considering themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them;
3. Societies that have developed on their territories, where they have continuous dwelt;
4. Self-identification as indigenous people and a claim to corresponding rights.[145]

Since all peoples in the African continent have undergone some degree of colonial process or occupation, the African Commission on Human and Peoples' Rights (ACHPR) has defined indigenous peoples in Africa with the distinction as people being in:

> A state of subjugation, marginalization, dispossession, exclusion, or discrimination because these peoples have different cultures, ways of life or mode of production than the national hegemonic and dominant model.[146]

In addition to this definition, criteria used in the MENA region and elsewhere distinguish "indigenous peoples" by their economic activity; i.e., as practitioners of hunting-gathering, artisanal fishing, shifting-agriculture, and/or pastoralism.[147]

In the final analysis, it is the attachment to a particular territory that distinguishes indigenous peoples in many countries from "minorities," which do not necessarily belong to a distinct territory within the State. Indigenous peoples in MENA generally adhere to these characteristics. The principal international law instruments that elaborate the rights pertaining to indigenous peoples are the ILO Convention 169: Concerning Indigenous and Tribal Peoples in Independent Countries (1989)[148] and the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP).[149]

Applying the international designation in MENA, for example, the ILO and ACHPR have identified the indigenous peoples in Egypt as the Nubian, Amazigh and Bedouin people.[150] However, other peoples of the region correspond to the international criteria as indigenous in the States where they live. Those peoples share some degree of customary tenure systems and may assert HLP restitution claims accordingly.

Useful Guidance

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Rule of Law

A State's obligation to ensure equal justice and protection under law extends not only to the specific matters of HLP rights, but also to guarantee the exercise of the process rights that enable those persons to realize their HLP rights. Under Article 2 of ICCPR, States parties bear the obligation also to guarantee the rule of law for all within their jurisdiction and/or effective control, including the duty to prevent and remedy violations of HLP rights. Article 2 of ICESCR also cites the overarching principle that the State must ensure full realization of the recognized rights in the Covenant by all appropriate means, including particularly the adoption of legislative measures. ICESCR's Article 4 stipulates that the enjoyment of enshrined rights be subject only to limitations determined by law, and only in so far as such limitations "may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society." The rule of law is essential for the State to carry out the set of functions that respect, protect and fulfil such rights. (See discussion of the respect/protect/fulfil formula under **Specific Rights** below.)

States must ensure that any person whose treaty-specified rights or freedoms are violated shall have an effective remedy, regardless if the violator acts in a private or official capacity. Article 2.3 of ICCPR outlines the duty of the State to provide "effective remedy." The Article specifies that the States shall ensure that any person pursuing such a remedy shall have her/his corresponding rights determined by a competent, independent, impartial tribunal of judicial, administrative or legislative authority, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy. Article 2.3(c) clarifies that that the State must ensure that the competent authorities also enforce such remedies when granted. While Articles 9, 14 and 15 provide the elements of a "fair trial, al of these aspects of the overarching principle of the rule of law pertain in HLP-restitution processes. (See also **Principle 12: National Procedures, Institutions and Mechanisms** below.)

Opportunities for Applying Rule of Law

Legal, legislative and institution reform efforts – The standard in international law, including ICCPR, requires each State to ensure the rule of law accordance within its constitutional processes and the provisions of international law. That may mean legislation and institutional reform to give effect to universally recognized human rights. This obligation applies also in transition-justice processes, where remedial efforts may call for special adjudication mechanisms and chambers to determine rights and

liabilities for HLP restitution. Legal systems are sovereign, but should align with the domestic application of treaty provisions. ICESCR Article 2.1 requires governments to do so "by all appropriate means"; that is, within the legal and administrative systems of each treaty-implementing State.

This principle is reflected also in the Vienna Convention on the Law of Treaties (VCLT), which provides that "[A] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."[151] The State may be obliged to modify the domestic legal order as necessary to give effect to their treaty obligations to enable HLP restitution.

UDHR affirms that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."[152] ICCPR sets the standard State obligation to, *inter alia*, ensure fair trials and "develop the possibilities of judicial remedy."[153] (See also **Section V: Legal, Policy, Procedural and Institutional Implementation Mechanisms**, **Principle 11: Compatibility with International Human Rights, Refugee and Humanitarian Law and Related Standards** below.)

In the case of foreign and military occupation – A significant IHL standard concerning the rule of law applies in the case of occupation is provided in Article 43 of The Haque Convention (1907) prohibiting the Occupying Power from altering the legal system in the occupied territory. The Article assigns the occupation authority the duty to restore and ensure public order and safety as far as possible. However, this accompanied the obligation of "respecting, unless absolutely prevented, the laws in force in the country."[154]

With respect to HLP rights, the Fourth Geneva Convention's Art. 53 stipulates that:

> Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.[155]

In the particular case of occupied Palestinian territory (oPt), Israel, as the Occupying Power, remains bound, as do all High Contracting Parties,[156] to respect and ensure respect of the Fourth Geneva (Civilians) Convention in all circumstance.[157] Despite its promulgation four decades before Israel's proclamation as a State, The Hague Convention has been formally accepted by Israel's judiciary and military as applicable in Israel's domestic law.[158] Nonetheless, Israel's changes to the Jordanian Planning Law promptly after invasion (July 1967) has foreshadowed much of the house demolitions and land confiscations that have dispossessed the Palestinian people in the oPt, deepening and perpetuating the territorial conflict, further complicating HLP restitution and enabling the prohibited transfer of alien population in the form of illegal Israeli settlements.[159] HLP restitution would require a return to the rule of binding IHL.

Reconstruction processes – Reconstruction processes involve a variety of functions and actors. These Principles apply in all cases, including the activities of public actors, civil society organisations and private-sector companies. Spatial planning, whether urban or rural, is often carried out by public-sector actors who are bound by human rights obligations as representatives of the State's central-government or local-government organs. Planning law and practice, whether as a conflict and violation prevention or remedial measure, must enshrine and ensure application of human rights, in particular, the human right to adequate housing (HRAH), by operationalising the overarching principles of implementation.

Where private sector actors engage in reconstruction, the human rights obligations of States party to ICESCR are explicit in the context of business activities by individuals and entities under their jurisdiction through the rule of law, including the duty to give effect to the Covenant in the domestic legal order.[160]

The Pinheiro Principles, like human rights, in general, apply in any situation, whether in peace time, during or after a conflict or disaster. For post-conflict or post-disaster scenarios, the following **Section V. Legal, Policy, Procedural and Institutional Implementation Mechanisms**, addresses HLP restitution scenarios in detail. These are provided under **Principle 18: Legislative Measures**, **Principle 19: Prohibition of Arbitrary and Discriminatory Laws** and **Principle 20: Enforcement of Restitution Decisions and Judgments** below.

Common Questions

How do rule-of-law requirements affect due process in HLP restitution?
The overarching rule-of-law principle of implementation helps guide the needed legislation and restitution procedures on the fundamental rights of affected persons and communities. Taken in alignment with the other overarching principles, legislators and decision makers involved in HLP restitution can do their jobs better to ensure effective remedy by applying this overarching principle. It ensures that due process "leaves no on behind," either in the exercise of human rights for refugees and DPs, or in the exercise of public servants' human rights treaty obligations.

The focus on the respective human rights entitlements and duties of respective parties may help overcome dilemmas over the relative merits of individual claims versus mass-claims. With an eye to the overarching rule-of-law principle, decision makers may favour individual-claim processing techniques, whereas collective claims may be incompatible with due process, while processing individual claims might decrease the efficiency and expediency of the restitution process.

What is required in the case of a State without human rights provisions in its domestic law?
The concerned territorial State without an adequate legal system, including planning law, consistent with human rights provisions may be in breach of its treaty and customary obligations as a State. (See **MENA State Treaty Ratification Status** in Annex.) The overarching rule-of-law principles should guide measures to reform the legal framework and judicial sector in line with its human rights treaty obligations, or to establish special measures and mechanisms, in order to meet the demands of HLP restitution, as noted in **Section V. Legal, Policy, Procedural and Institutional Implementation Mechanisms**.

Useful Guidance

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Tunisian Organic Law on Establishing and Organizing Transitional Justice, at: http://www.ohchr.org/Documents/Countries/TN/TransitionalJusticeTunisia.pdf;
Yemeni Law on Transitional Justice and National Reconciliation, at: http://www.peaceandjusticeinitiative.org/wp-content/uploads/2012/03/Yemeni-draft-Transitional-Justice-Law.pdf.

Progressive Realisation (of Housing, Land and Property Rights)

Since ICESCR enshrined the progressive realization of rights as an overarching treaty-implementation principle in 1966, subsequent human rights treaties have reiterated that standard of compliance.[161] This obligation means that States shall respect, protect and fulfil ESCR so as to ensure consistent progress, without regression or retrogression, and without deterioration in the enjoyment of ESCR. In Article 2.1, ICESCR identifies this principle as "progressive realisation." With regard to the specific human right to adequate housing as a component of an adequate standard of living, ICESCR's Article 11 enshrines the recognition of the right to "the continuous improvement of living conditions" and the corresponding obligation of States Parties to take "appropriate steps to ensure the realization of this right." Further, in the three purposeful pillars of the UN Charter, States are individually and collectively obliged to ensure forward progress in realising economic and social progress and development,[162] while also obviating the threats to human rights, peace and security that arise from failure to achieve such progress.

In the context of increased globalization of economic activities and a growing trend toward privatization of public goods and services, CESCR has pointed out the importance of States parties' obligations to ensure the progressive realization of Covenant rights and avoid retrogression in their enjoyment by all.[163] The progressive realization of ESCR relates also to the steps that States Parties undertake to regulate non-State actors also to *protect* human rights by ensuring their progressive realization and non-retrogression.

Given the resource and knowledge constraints faced by many countries, the CESCR's monitoring function has recognized that the fulfilment of certain economic and social rights can be achieved only over time. This is important to HLP restitution, often a lengthy and gradual process. Progressive realization of ESCR does not mean that governments do not have obligations until a certain level of economic development is reached, but rather that States should take deliberate and verifiable steps immediately and in the future toward the full realization of refugees' and DPs' HLP rights. It means also that, no matter what level of resources at their disposal, governments must take immediate steps within their means toward the fulfilment of these rights.

Understanding human rights as they relate also to non-nationals can help in establishing the core obligations that states have to all individuals in a State. Each State owes respect, protection and fulfilment

of a core set of rights to every individual residing in it, a supposition supported by the ICESCR and by CESCR's interpretations. Establishing that floor of minimum core obligations does not only benefit non-nationals, but rather every individual in the State's jurisdiction and territory of effective control.

Several international instruments have specified steps that States can take immediately, regardless of the level of resource availability.[164] For example, the elimination of discrimination, the removal of barriers and making certain improvements to the legal and juridical systems do not necessarily pose a resource burden. Let us explore how this principle could enhance HLP restitution.

Opportunities for Applying Progressive Realisation

Institutional and procedural improvement – Correcting past practices and procedures may be needed to achieve HLP rights progressively, including through affirmative action in HLP restitution, whereby victims or communities subject to systematic discrimination or disadvantage would be the subject of policies, programmes and/or procedures that also aim to improve living conditions on a par with other citizens. This principle also aligns with the 2030 Agenda principle of "leaving no one behind" and "reaching the further behind first."

Reconstruction and rehabilitation – The Impoverishment Risks and Reconstruction (IRR) model is one conceptual and methodological approach to performing essential functions in support of analytical and operational development work that seeks the progressive realization of livelihood standards, mostly applied in cases of displacement and resettlement in the context of development. However, it is also applicable in cases of HLP restitution following conflict or disaster.[165] Such methods and approaches can help to uphold the development pillar of the UN Charter, while providing evaluation tools to ensure the progressive realization of ESCR through the continuous improvement of living conditions.

Common Questions

Does progressive realisation mean that corresponding State obligations to HLP restitution are not immediately applicable?

No. A State's individual, collective, domestic and extraterritorial obligations are immediately applicable upon the State's ratification of any treaty. National constitutions and domestic legislation may further specify corresponding obligations of State and government domestic. The continuous improvement of living conditions is guaranteed as a human right and is a cardinal function of the State under several human rights treaties and global policy commitments.

What are the mechanisms available to the State for ensuring progressive realisation of HLP rights?

When domestic technical or economic resources are not sufficient, a review of options to direct the maximum of available resources and international cooperation and assistance to ensure progressive realization. (See discussion of overarching principles **Maximum of Available Resources** and **International Cooperation and Assistance** below.)

Do economic, social and cultural rights oblige governments to supply goods and services free of charge?

As a general rule, no. It is a common misconception to assume that governments are required to provide certain material goods and services. States have a responsibility to ensure that facilities, goods and services required for the enjoyment of HLP rights are available at affordable prices. This means that the State must ensure that the direct and indirect costs of essential goods and services such as housing, food, water, sanitation, health or education should not prevent a person from accessing these services and should not compromise his or her ability to enjoy other rights.

However, this statement accompanies two caveats: First, in some instances, ensuring refugees' and DPs' enjoyment of rights may involve providing subsidized or free goods and services to them. For example, States may be required to provide housing on an exceptional basis to ensure that no one becomes homeless.

Second, some services necessary for realizing certain HLP rights and longer-term durable solutions must be provided free of charge. For example, under international law, primary education must be free and compulsory for all, including refugees and displaced children, and secondary education should be available and accessible to all, in particular by the progressive introduction of free education.[166]

Some national legislation also might require public institutions to provide other services relevant to other HLP rights free of charge. Returning refugees and DPs should know these conditions, and their fulfilment should be verified in advance of return or resettlement.

Useful Guidance

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Maximum of Available Resources

ICESCR establishes the standard for States' human rights compliance by prioritizing resource allocation to realize ESCR. This overarching principle also presages global commitments of the 2030 Agenda. It is especially relevant to apply this overarching principle of treaty implementation in the HLP restitution context, as it is a highly resource-intensive undertaking.

Apart from those immediate measures precedent to progressive realisation/non-regression obligations discussed above, the full restitution of HLP rights recognized here could be achieved over a period of time, owing to constraints that include resource allocation. The maximum of available resources refers not only to the financial capacity of a State, but also to other types of resources relevant to HLP restitution within the principles and framework of reparation. These may be constrained by, *inter alia*, insufficient budget allocation and financial arrangements, as well as a shortage, or insufficient provision of other natural resources, physical planning provisions, infrastructure, livelihood inputs and building materials. These, in turn, require human, financial, technological and information resources. States, including subnational governments and authorities, shall seek the needed resources to respect, protect and fulfil the rights of refugees and DPs progressively to restitution of their HLP within the principles and framework of reparation.

Opportunities for Applying Maximum of Available Resources

Assessing available resources – The principle factors affecting maximum of available resources are found in a combination of fields of government finance and resource-management, including:

- Government expenditure
- Government revenue
- Development assistance
- Debt and deficit financing
- Monetary policy and financial regulation

The criteria for assessing the State's available resources often include determination of (1) efficiency and effectiveness of public expenditure, (2) leveraging private contributions to public services and infrastructure, (3) participation and transparency in budgeting and public expenditures, (4) fiscal austerity measures, (5) taxation, (6) and royalties paid for utilization of natural resources and infrastructure, and (7) profits from public enterprises.

Monetary Policy and Financial Regulation – Governments across MENA face a challenge to reform monetary policy and regulate finance toward achieving sustainable development before, during and after the region's refugee and displacement crisis. Crisis makes certain aspects of monetary policy and financial regulation urgent, and ensuring the maximum of available resources needs reform to meet the exigencies of HLP restitution and reconstruction.

The region has long endured the highest rate of capital flight of any region of the planet, across the range of resource-based, state-led and balanced economies.[167] The increasingly state-enabled private-sector preferences across most MENA States gradually have disengaged national industrial capital. The region's economies have evolved more toward commerce, investing and divesting, and less on production of all kinds. Meanwhile, industrial production has struggled to compete effectively with imports and military-controlled or royal family-controlled enterprises. Policy approaches in most MENA States may need to pursue a structural shift from these trends, in order to meet the challenges that HLP restitution and reconstruction have posed across the region.

Directing investment – Implementing the Pinheiro Principles aligns with national interests in the sense that they provide a recipe for long-term stability and its fruits. The global discourse on ESCR, in general, reflects an increased public awareness of how decisions around investment actual affect their daily lives. Governments also increasingly realise that investments can be both a positive and negative force. While

serving to improve living conditions for some, they also can increase disparity and societal tensions, conflict and environmental challenges that negate the development promise.

Some investors also have begun to understand how investment in projects without human rights and environment risk management can create financial, legal and reputational hazards to their own operations. Applying the Pinheiro Principles in the context of HLP restitution, as explicit national and international goals, may call for policy analysis and reform to determine what most-needed investment policy to achieve both recovery and avoidance of future HLP rights violations.

Common Questions

What are the steps needed to ensure the maximum of available resources for HLP restitution?
The techniques of budget analysis within the frame of the State's human rights performance are a practical starting point. A thorough evaluation of public budget performance, with policy makers, investors, the community of refugees/DPs and the general public, would clarify State's resource-allocation options. The resulting policy analysis may call for shifts in spending and investment priorities, where resources may have to be reallocated from certain sectors to others with greater support for the HLP-restitution process in the longer-term interest.

Such analysis would help also to inform and prioritise requests and proposals for ODA and other forms of international cooperation and assistance. It also should clarify: (1) how investment treaties, investment contracts and domestic policies, laws and regulations could contribute to ensuring that investment is carried out in a way that respects, protects and fulfils HLP rights restitution; (2) how governments, companies and other actors could invest to avoid and mitigate further negative impacts on HLP rights-violation victims; and (3) how to maximise the investment benefits brings to them.

What are the trade-offs from dedicating the maximum of available resources to HLP restitution? – Only a proper budget analysis could tell the opportunities and opportunity costs in allotting resources to HLP restitution. However, the operation of the Pinheiro Principles in any country coincides with the national—including transitional-justice—goals of peace, stability, security and reconciliation. A coordinated HLP-restitution effort necessarily would pool resources of multiple ministries and sectors to elaborate the answers to this question.

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International Cooperation and Assistance

Article 1(3) of the UN Charter[168] provides that achieving international cooperation in solving "international problems of an economic, social or humanitarian character" is among the overarching purposes of the United Nations.[169] As parties to the UN Charter, the Member States have pledged to "take joint and separate action in co-operation" to resolve international economic, social, and related problems as an obligation of enshrined also in Articles 55 and 56.[170] This duty is expressed without any territorial limitation, and should be taken into account when addressing the scope of States' obligations under human rights treaties.

Also in line with the Charter, the International Court of Justice (ICJ) has acknowledged the extraterritorial scope of core human rights treaties, in general, focusing on their object and purpose, legislative history and the lack of territorial limitation in the texts.[171] More specifically, common Article 1 of the Human Rights Covenants of 1966 refer to obligations arising from international cooperation,[172] and ICESCR also cites international cooperation among the overarching principles of treaty implementation.[173] Particularly relevant are the specific rights to an adequate standard of living[174] and to take part in cultural life and to enjoy the benefits of scientific progress and its applications.[175]

The UN Committee on the Rights of the Child also has interpreted the extraterritorial obligations of States Parties to the CRC.[176] Another restatement of international law on the subject is found in the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.[177]

Considering States' positive obligations under human rights treaties, the UN Charter and other binding instruments, as well as declaratory commitments, echo the call for international cooperation to ensure the maximum of their available resources and other capacities to provide assistance to States, including subnational governments and authorities, for progressive development. That is especially compelling for those organs of the State engaged in HLP-rights restitution within these Principles and the reparations framework.

Returnees to their HLP face resource constraints in certain States and territories in which "maximum of available resources" includes also resources available to a State internationally. States, including subnational governments and authorities.[178] Those States also bear an obligation—and should be able to exercise that obligation—to seek international cooperation and assistance in their efforts to respect, protect and fulfil refugees' and DPs' HLP restitution rights within these Principles.

Extraterritorial obligations arise also when a State Party may exercise control, power or authority over business entities or situations located outside its territory in a way that could have an impact on the enjoyment of human rights by people affected by such entities' activities or by such situations. CESCR has elaborated this aspect of treaty obligation explicitly in the context of business activities.[179]

The practical means by which international cooperation may be achieved in this area has not been elaborated in the UN Charter; however, it has been clarified through international practice, including the "institutionalization" of cooperation through UN Charter-based specialized organizations and other mechanisms. Most subsequent treaties, international resolutions and relevant State and organizational practice also indicate how such cooperation can take shape. For example, the UN Declaration on Principles of International Law affirms that:

> States have a duty to cooperate with each other, irrespective of the differences in their political, economic and social systems…in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination.[180]

A UNGA resolution, that Declaration can be seen as an important tool for interpreting other relevant international legal texts.[181] International-cooperation duties are made explicit also in the 1951 Convention relating to the Status of Refugees. Its Preamble also provides that:

> the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of the problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation.[182]

That treaty's Article 35 addresses "Co-operation of the national authorities with the United Nations" and Article 36 on "Information on national legislation.[183] Article 35 also obliges States parties to cooperate with UNHCR in the exercise of its functions and, in particular, to facilitate its duty to supervise the Convention's application. Among other things, this includes a requirement for States to furnish UNHCR with information and statistical data regarding refugees' conditions, the Convention's implementation in their territory, and laws or proposed laws affecting refugees and other "persons of concern."[184]

Fulfilment of this strict requirement and respect for UNHCR's guidance and interventions in the exercise of its mandate are seen also as ways in which States exercise international cooperation within the international protection-and-assistance regime. The practice encourages other States to do likewise. This reflects the view that the principle of international cooperation is expressed through the establishment

of cooperation with, and support for international organizations, effectively "institutionalizing" their duty to cooperate in resolving the global refugee and displacement crisis.[185]

Finally, also consistent with human rights to adequate housing, land and property and their corresponding obligations, States also bear a *negative* duty to undertake steps and effective measures to respect those rights by *refraining* from actions or measures that violate and/or deprive persons of their HLP extraterritorially. Under States' obligation to protect human rights, governments bear the duty to prevent third parties within their jurisdiction and/or effective control from actions or measures that violate and/or deprive persons of their HLP rights. The States are required to prosecute violators and remedy harm consistent with the principles and framework of reparation.

Opportunities for Applying International Cooperation

Assistance of multilateral organisations – States facing technical and resources challenges in the conduct of HLP restitution should exercise their obligation—and right (*vis-à-vis* other States)—to access assistance from multilateral organisations, including UN Charter-based agencies operating in the field. Those organisations carry a human rights mandate by virtue of the fact that their operation rests on the three pillars of the UN Charter, while providing technical assistance in their specialized field of development. At the country level, those specialized organisations are usually coordinated through the (reformed) UN Resident Coordinator system.

Bilateral assistance – Human rights obligations apply to both parties of bilateral assistance to support HLP restitution. Where that assistance is a form of humanitarian relief, IHL, in general, and the Fourth Geneva Convention, in particular, also applies, whether as a matter of treaty ratification or an obligation that arises from customary law.

Trade and investment – In the hierarchy of laws, human rights, humanitarian law and peremptory norms over-ride private law agreements and transactions. It is up to all parties to ensure compliance with the prevailing norms before entering into any transactional arrangement affecting the human rights and well-being of individuals or communities.

International financing – Specific projects and/or general budget support to meet the burden of providing services to refugees and DPs, including for protection of their HLP rights, should fall within the "global responsibility" of the crisis. Lending institutions financing HLP restitution or other support for refugees and DPs must not impose conditions on host governments that incur further debt or other costs to the State and its people(s). Burden sharing in the financial realm should not impose disproportionate costs, debt or other penalties on individual States, their constituent organs or publics for administering to refugees or DPs. [186]

Common Questions

How can the human rights obligations inherent in the overarching principle of international cooperation affect foreign policies?

In an ideal world, treaties, in general, and human rights treaties and peremptory norms form a unitary set of standards that should guide the foreign policies and related conduct of States. For example, international law requires all States to deny recognition of illegal situations violating peremptory norms and not to cooperate with parties to the breach.[187] However, the world of international relations has not yet evolved to achieve that ideal in practice. Nonetheless, human rights and humanitarian advocates call for coherence between the norms and foreign policy behaviour.[188]

What examples indicate the linkages between human rights and international cooperation?

An emerging trend in global policies reflects the call for coherence among humanitarian norms and sustainable development within the human rights frame. The Committee on World Food Security (CFS) has recognized the importance of such coherence in addressing protracted crises.[189] The 2030 Sustainable Development Agenda and the Paris Agreement on climate change also recognise human rights as the normative framework that guides implementation.[190] At the UN operational level, the inter-linkages between development, peace and security and human rights remain the standard set forth in the UN Charter.[191]

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Other Principles of Operation

As an underlying principle, all organs of States, practitioners and cooperating parties applying these Principles should avoid exacerbating manifestations, specific challenges and/or the underlying causes of displacement and the pursuit of refuge. This "*do no harm*" principle forms an important element of the UN's ethical approach and highlights the importance of understanding how international assistance interacts with local conflict dynamics. It is informed by experience that interventions, such as humanitarian aid, can have both positive and negative impacts on conflict dynamics.

The concept of "*conflict sensitivity*" also emerged from "do no harm," and can be defined as the ability of a person or an organization to understand both the context of operation and the interaction between the intervention and the context, and then to act upon this understanding, in order to avoid negative impacts and maximize positive impacts. For practitioners in the process of HLP restitution, this means understanding how their work influences, or is influenced by existing power relationships, customs, values, systems and institutions.

Mitigating risk, or *risk reduction*, in any context, is a systematic reduction in the extent of exposure to a hazard or propensity to harm and/or the likelihood of its occurrence. In the case of refugee and displaced person return and HLP restitution, risk reduction could mean measures to avoid exposing women and girls to sexual exploitation or other gender-based violence, or avoiding to put returnees in a situation where they could be subject to reprisals or other forms of violation of their human rights in the return and restitution process. Special measures would be needed to ensure that children are not exposed to risks, including statelessness, child labour, forced and early marriage and/or human trafficking.

In planning, return or resettlement processes, it is important also to maintain or restore the "*social fabric*" of the communities affected. *Social cohesion*, to the extent that it can be achieved through the fact and process of HLP restitution, will be essential to the sustainability and durability of the solutions sought and found. Cultural sensitivity and *respect for cultural preferences* are related key principles to operationalise, also subject to human rights criteria.

In light of the region's specificity, the common-but-differentiated obligation of the different spheres of government—in addition to looser "commitments" made at the global level—call for solidarity and responsibility sharing especially to redress (1) climate change and (2) human displacement. Uniquely, the MENA region, which faces large-scale displacements among water shortage and drought risk, as well as crop-yield reduction in unique combination due to climate change.[192]

In reconstruction, an operable principle that has gained acceptance in recent years is "*building back better*." The concept, as applied in design and reconstruction, pursues physical planning solutions with communities such that will produce solutions that exceed mere repair of damage, but seek also to identify, eliminate or, at least, mitigate former vulnerabilities.[193]

Lessons drawn from the peacebuilding experience are particularly useful for HLP restitution practitioners.[194] The lessons include understanding the failure to recognize (1) the depths of divisions; (2) a misplaced assumption that simply bringing people together will automatically have a positive result; (3) how re-enforcing unequal power relations by the choice of actors to include/exclude and the nature of their participation, may be supporting an unjust status quo; (4) that arriving in a situation with preconceived ideas or models and failing to consult properly undermine the HLP-restitution goal. These lessons should factor in building conflict sensitivity, based on regular conflict analysis, mainstreamed from planning, through to implementation, monitoring and evaluation of activities.

The HLP rights addressed in the Principles align most closely with the human rights identified as ESCR. However, those rights cannot be realized without the exercise of civil and political (process) rights. Meanwhile certain civil and political human rights such as the human rights to information; legal personality; nationality; freedom from torture, cruel, in human or degrading treatment or punishment; or fair trial must be respected, protected and fulfilled for HLP restitution to proceed. Thus, the *interdependence and indivisibility* of all human rights, in this context, also refer to their application both to remedy and prevention of further violations, as well as eventual conflict.

The complementary nature of the various regimes of law grounding these Principles also emerges from HLP-restitution theory and practice. This unitary system is reaffirmed also below in **Section V: Principle 11: Compatibility with International Human Rights, Refugee and Humanitarian Law and Related Standards**. As in this expanded **Section III: Overarching Principles**, the Pinheiro Principles are compatible and aligned with general principles of international law, *jus cogens*, peremptory norms and *erga omnes* obligations, as well as the provisions of ratified treaties.

The consistent HRBA of the Pinheiro Principles also contributes to *accountability* and resolving *root causes*,[195] but also *long-term trajectory*.[196] While both are important to achieve a durable solution, the the Pinheiro Principles offers the guide to HLP restitution of victims, allowing the efforts at accountability and reform to take place integrally with other long-term sustainable-development efforts.

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SPECIFIC RIGHTS

The specific human rights elaborated in **Section IV** are applied to the situation of refugees and DPs and/or groups. However, each is explanatory of a human right codified in international law and, by definition as a human right, each is universal in nature. That means that the same human right applies to every living person, no less for refugees and DPs.

As with all human rights, the restitution of refugees' and DPs' HLP rights gives rise to three aspects of State obligation that are equally important. Without suggesting any order or hierarchy, each aspect is essential to the composite task of implementing the State's human rights obligations, namely the obligations to respect, protect and fulfil:

(a) The obligation to respect requires a State to refrain from interfering with the freedom of the individual;

(b) The obligation to protect requires a State to prevent other individuals and groups (third parties) from interfering with a right of the individual;

(c) The obligation to fulfil requires a State to take positive measures to ensure the enjoyment of a right.[197]

The obligation to fulfil is further subdivided into three main dimensions:

(a) The corresponding obligation to *promote* the restitution of housing land and property rights within the principles and framework of reparation imposes a duty to disseminate information and undertake educational measures to raise awareness about the measures, procedures and opportunities available for restitution of housing land and property rights within the principles and framework of reparation;

(b) The corresponding obligation to *facilitate* the restitution of housing, land and property rights within the principles and framework of reparation requires States to undertake positive measures and enabling strategies and programmes to assist refugees and DPs to restore their housing, land and property;

(c) The corresponding obligation to *provide* requires that States undertake to make available the resources and their delivery consistent with these overarching principles to restore refugees' and DPs' housing land and property rights within the principles and framework of reparation.

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.

The right to freedom from displacement has been expressed such that:

> "No one shall be forced to leave his or her home, and no one shall be forcibly relocated or expelled from his or her country of nationality or area of habitual residence, unless under such conditions as provided by law solely for compelling reasons of national security or specific and demonstrated needs of their welfare, or in a state of emergency as in cases of natural or man-made disasters. In such cases all possible measures shall be taken in order to guarantee the safe departure and resettlement of the people elsewhere."[198]

At the base of claiming this right is the entitlement to secure and legally protected tenure, an integral element of HRAH. Tenure arrangements cover a spectrum—some call a "continuum"—of tenure and diversity of tenure forms. It is incumbent upon the State to "take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups."[199]

In this view, the conferring and legal protection of HLP tenure may be perceived first in its preventive dimension of HRAH implementation; that is, a State implementing its corresponding HRAH obligation under ICESR or ICERD would prevent arbitrary (i.e., forced) evictions, the trigger for so much displacement and refugee flight. However, it is crucially important in the remedy and HLP-restitution phase to note that refugees and persons displaced from homes and lands under formal or traditional tenure systems do not extinguish their HLP rights by their interim absence. Plausible and verifiable tenure claims and corresponding human rights, even without formal documentation, must be respected, protected and fulfilled.

Most human rights are relevant at all times during and after displacement, and human rights safeguards are vital for preventing displacement before it takes place. Pre-emptory measures would be consistent with the spirit and letter of numerous international instruments and policy guidelines, including the *Guiding Principles on Internal Displacement* (*IDP Guiding Principles*). Principle 5 notes that:

> "All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons."[200]

The term "all authorities," in this instance, means public authorities operating in central, regional and local spheres of government. As organs of the State, all are equally treaty bound, albeit with differentiated functions. It may be opportune to inform central and local authorities of their duties under international law as they relate to their potential contributions to remedy *and* prevention of HLP violations. These Principles provide a basis for the orientation below in **Section V. Legal, Policy, Procedural and Institutional Implementation Mechanisms**, **Principle 12: National Procedures, Institutions and Mechanisms**.

Pinheiro Principle 5.2 encourages States to incorporate protective and preventive measures against displacement in domestic law. This echoes an actual requirement of domestic application under

international treaty law.[201] Notably, Egypt's 2014 Constitution provides that "All forms and types of arbitrary forced displacement of citizens shall be prohibited and shall be a crime not subject to statute of limitations."[202]

Principle 5.3 then makes specific reference to the corresponding domestic prohibition of the practice of forced eviction and the demolition of homes as "gross violations."[203] The destruction of agricultural areas and the confiscation or expropriation of land as a punitive measure may be indicative of graver crime.

Principle 5.4 reflects the need for additional human rights safeguards to protect people from both State-sanctioned and non-State or privately driven displacement. This would apply to a range of different actors, including armed groups, private landlords and corporations intent on gaining control over a land parcel currently occupied by housing and any number of other persons and institutions entitled to protection from predators.

Opportunities for Applying Principle 5

Analysing the underlying causes of displacement – Because restitution is effectively the process by which arbitrary or unlawful displacement is reversed and the original situation restored, understanding the causes of displacement is vital to establishing the potential scope and modalities of any restitution process. Users of the Handbook can refer to Principle 5 when exploring the causes of displacement and confirming the legitimacy of restitution claims. The resulting analysis relates to the needs assessments and political-economy analysis called for under **Principle 12: National Procedures, Institutions and Mechanisms** below. Concluding that refugees and DPs were forced to flee their original homes and lands under forced evictions or other gross violation of human rights ultimately will strengthen any victim's eventual restitution claims with the full entitlements of reparation.

Carrying out protection measures – Defending people, including refugees and DPs, from arbitrary forced eviction, the destruction of their homes or the confiscation of their land is a key function of those engaged in refugee or IDP protection. Principle 5 refers to protection against forced eviction and resulting displacement, and users of the handbook can refer to the Pinheiro Principles when assisting States, in accordance with Principle 5.2, to bring national laws and the performance of security forces into conformity with international standards regulating these practices. Principle 5 also supports other lawful means and tools for assisting inhabitants to resist planned or threatened forced evictions.

Common Questions

What positive measures can strengthen protection against forced evictions?

Users of the Handbook can attempt to generate support for expanding national legislative recognition of HLP rights by ensuring that explicit protections against forced evictions are included within domestic law. A range of national constitutions and laws throughout the world guarantee such rights and protections. Within the MENA region, for example, Article 63 of Egypt's 2014 Constitution provides that "All forms and types of arbitrary forced displacement of citizens shall be prohibited and shall be a crime that is not subject to a statute of limitations."[204] Beyond constitutional and legislative provisions, further efforts may be needed to encourage governments to implement such prohibitions. Based on impact assessments such as those cited in **Opportunities for Applying Progressive Realisation** above, advocacy could encourage governments to support local and national moratoriums on forced evictions and to issue instructions to authorities to undertake measures to prevent forced eviction.

What else can be done to convince governments to act against forced eviction?

Detailed monitoring and reporting of the consequences of displacement and forced eviction is one method of conveying the severity of the loss and suffering that results. In an attempt to attribute monetary and other values to the consequences of eviction, Housing and Land Rights Network (HLRN) has developed a quantification method known as the Violation Impact-assessment Tool, which HLRN promotes as a method to be applied at any phase of forced eviction or other HLP rights violation.

The outcome of the quantification exercise includes a verifiable accounting of often-shocking sums of values lost in the course of displacement. That message conveys the extent to which forced evictions and displacement deepen poverty and cause the poorest citizens to pay the price of gross violation. In many cases, the victims subsidise supposed development projects with their losses of assets and livelihoods. Such a tool is versatile and can be used in the context of other violations. Elements of the Violation Impact-assessment Tool also may be usable in assessing the adequacy of restitution and compensation schemes, or the policy gaps to be filled for such remedy.

Useful Guidance

CESCR. GC No. 7: The right to adequate housing (Art.11.1): forced evictions, 20 May 1997, paras. 15–16, contained in document E/1998/22, annex IV, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en.

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OHCHR. *Fact Sheet No. 25: Forced Evictions and Human Rights, Fact Sheet No. 25: Rev. 1* (Geneva: OHCHR, 2014) 1996, at: https://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf;

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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.

The widely recognised fundamental human rights to privacy and respect for the home are linked directly to both the prevention of displacement. Article 12 of the UDHR provides that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." Consequently, this language is contained in Article 17 of the ICCPR (1966).

The right to be free from forced eviction is implicit in HRAH, as well as in the human right to privacy and respect for the home. (See answer to ***How are the terms "arbitrary" and "unlawful" best understood?*** under **Principle 1** above, and under **Principle 17** below concerning secondary occupants.)

HLP restitution arrangements should ensure the preventive application of HRAH and ensure that no further forced evictions and displacement take place. This assurance is a requirement of reparation, which provides for guarantees of non-repetition.[205]

Exceptional situations may arise in which public authorities may interfere with the right to respect for private and family life, home and correspondence. However, that is allowed only whereby the authority can demonstrate that its action is lawful, necessary and proportionate in order to:

- Protect national security
- Protect public safety
- Protect the economy
- Protect health or morals
- Prevent disorder or crime, or
- Protect the rights and freedoms of other people.

In the MENA region, the right in Principle 6 is expressed similarly in most constitutions. Also, the ACHR guarantees that "Privacy shall be inviolable and any infringement thereof shall constitute an offence. This privacy includes private family affairs, the inviolability of the home and the confidentiality of correspondence and other private means of communication."[206] The 2017 draft Libyan Constitution refers to the "sanctity of private life." Article provides that "It shall not be permissible to enter private places except for necessity, and they should not be searched except in the case of *flagrante delicto* or with a court warrant."[207] Iraq's and Morocco's constitutional provisions are quite similar.[208] Egypt's 2014 Constitution is more explicit in the case of derogation to the rights in Principle 6, stating:

> The right to privacy may not be violated, shall be protected and may not be infringed upon….Privacy of homes is inviolable. Except for cases of danger or call for help, homes may not be entered, inspected, monitored or eavesdropped except by a reasoned judicial warrant specifying the place, the time and the purpose thereof. This is to be applied only in the cases and in the manner prescribed by Law. Upon entering or inspection, the residents of houses must be apprised and have access to the warrant issued in this regard.[209]

Opportunities for Applying Principle 6

Analysing the causes of displacement – As with the other rights reaffirmed in Section III of the *Principles*, the right to be protected against the arbitrary or unlawful interference with one's home constitutes both a means for preventing displacement and as grounds for securing restitution if this constitutional right is infringed either in an individual or collective context. Users of the handbook should pay particular attention to determining whether:

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

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

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

Common Questions

How do the principles of proportionality and fair balance relate to HLP-restitution rights?

The legal doctrines of *proportionality* and *fair balance* are vital in determining whether interferences with HLP rights can be justified under human rights law, and whether the Principles are applicable in such instances. If State authorities arbitrarily revoked privacy rights and respect for the home guarantees, or

apply forms of discrimination, that would classify as *disproportionate*, and thus violate international law. Similarly, the *fair balance doctrine* stipulates that, in determining the compatibility of a certain act by a State with regard to housing and property issues, any interference in the exercise of these rights must strike a *fair balance* between the aim sought to be achieved and the nature of the act.

The principle of fair balance has become universal in the world's major legal systems.[210] It lies at the core of the Arab Convention on Commercial Arbitration, for example, whose parties express the wish "to obtain a fair balance in the matters of solution of disputes…"[211]

Useful Guidance

CCPR. GC No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Article 17), 28 September 1988, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6624&Lang=en; .
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PRINCIPLE 7: The Human 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.

The right to the peaceful enjoyment of possessions is one of the most frequently violated rights when forced evictions and displacement occur. This formulation is found in the UDHR (Art. 17), which specifically refers to a human right "to *own* property alone as well as in association with others" and that "No one shall be arbitrarily deprived of *his* property" (emphasis added). Since 1948, the right to property has evolved to transcend ownership to include other types of tenure and overcome the gender-specific reference in UDHR. That right is guaranteed with corresponding State obligations in ICERD (Art. 5(d)(v)), CEDaW (art. 16(1)(h)) and other instruments.

With respect to refugees, Article 13 of the Refugee Convention protects refugees' moveable and immovable property, providing that:

> "The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property."[212]

The Refugee Convention affirms that the refugee retains her/his human right to property regardless of any change of location or status within the State Party. The Convention prohibits any discrimination against the refugee with respect to any property or type of tenure, thus, obliging States to *respect* full property rights, to *protect* from violation by any party within the State's jurisdiction or territory of effective control.

The rights and corresponding obligations are regardless of the type of tenure: freehold (i.e., ownership) or leasehold (i.e., rental), or other form. The Convention does not distinguish between property acquired or held within the State of origin, or in the State of refuge, asylum or resettlement. The refugee's property right is upheld irrespective of its location, type of tenure or other status within the State Party's jurisdiction and territory of effective control.[213]

Therefore, no refugee or displaced person holds rights to property in any way inferior to any person in another circumstance. Although a human right to property is explicitly absent from the two Human Rights Covenants of 1966, that right becomes explicit in application to refugees and DPs.

In the context of internal displacement, Principle 21 of the *IDP Guiding Principles* takes a comparable approach, recognising that:

> No one shall be arbitrarily deprived of their property and possessions. The property and possessions of all internally displaced persons shall in all circumstances be protected, in particular, against the following acts: pillage; direct or indiscriminate attacks or other acts of violence; being used to shield military operations or objectives; being made the object of reprisal; and being destroyed or appropriated as a form of collective punishment. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.[214]

Similarly, ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries provides that

> The rights of ownership and possession of the peoples concerned over the lands [that] they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect….[215] Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.[216]

ACHPR provides in Article 14 that: "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need, or in the general interest of the community and in accordance with the provisions of appropriate laws." The African Charter does not discriminate by type of tenure, nor limit the right to individuals. This is consistent also with the European Convention on Human Rights (ECHR) in qualifying the right.[217]

ACHPR's Article 21.2 also provides: "In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation."[218]

ACHR enshrines a human right to property, but only in the sense of private property and ownership. Article 31 of its 2004 version states that: "Everyone has a guaranteed right to own private property, and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property." The Arab Charter also reiterates the guarantee of private property rights in Article 25, providing that: "Every citizen has a guaranteed right to own private property. No citizen shall under any circumstances be divested of all or any part of his property in an arbitrary or unlawful manner."[219] That articulation guarantees the right for citizens only; therefore, ACHR does not recognize property as a *human* right.

This Principle is consistent with the formulation found in ECHR, which refers to a "right to the peaceful enjoyment of possessions" rather than "right to property." The rights to adequate housing and land are intended to ensure that *all* persons have a safe and secure place to live in peace and dignity, including

non-owners of property, the term "right to property" is often understood as protecting property *ownership* and only holders of that exclusive right, which is not the only relationship with housing or landed property that fulfils a universal human right. The broader articulation of the "right to the peaceful enjoyment of possessions" also relates to the reasons why the term "housing, land and property rights" now is habitually used to describe these issues, as it is more appropriate for, and relevant to all legal systems and country settings.

The ECHR jurisprudence on Article 1 of Protocol No. 1 ("the right to the peaceful enjoyment of possessions") is relevant also to the MENA region. In the watershed case of *Loizidou v. Turkey*,[220] which involved the impossibility of return to one's property, the European Court noted that:

> …the complaint is not limited to access to property, but is much wider and concerns a factual situation: because of the continuous denial of access the applicant had effectively lost all control, as well as all possibilities to use, to sell, to bequeath, to mortgage, to develop and to enjoy her land....The continuous denial of access must therefore be regarded as an interference with her [Tinia Loizidou's] rights under Article 1 of Protocol No. 1.[221]

Many countries implementing HLP-restitution programmes maintain ownership and other forms of tenure distinct from Western notions of "private property." Indigenous tenure patterns may be more oriented toward *social functions* of HLP, including collective, customary and common ownership, or norms of "stewardship" of the land. These issues and values are often extremely complex, but should be constantly borne in mind when applying the Pinheiro Principles in their integrity, including the respect, protection and fulfilment of durable solutions that uphold local self-determination.

A property right is the authority and entitlement to determine how a resource is used, regardless of the party holding that right. Nonetheless, a property right, even a private property right, is not absolute. One of the limits to a property right arises from its inherent social function; i.e., subject to the norms and standards that the society determines. In the 2016 *New Urban Agenda*, States recognized the "ecological and social functions of land" as part of "Our shared vision."[222]

Opportunities for Applying Principle 7

Upon return and resettlement

Resettlement arrangements should not replicate unjust patterns of land and housing tenure that perpetuate the conditions of the original displacement, including violation of various human rights, in particular the human rights to adequate housing, property/the peaceful enjoyment of possessions of property and/or freedom from discrimination on the basis of gender, perceived political affiliation or other arbitrary criterion. A purely ownership-biased approach to restitution could perpetuate injustice, including preservation of slum lords. Therefore, case-by-case approach may be needed to ensure "fair balance" with the bundle of rights and responsibilities should prevail in restitution processes. Therefore, the principles of social function of property and the indivisibility of human rights are indispensable methodological tools for the conscientious application of Principle 7.

Advocacy efforts in support of restitution measures – Principle 7 can act as a firm basis for supporting the inclusion of HLP- restitution measures and institutions within peace agreements and their implementation through voluntary repatriation arrangements and appropriate domestic legal frameworks. Because forced displacement is so often based on unlawful and arbitrary actions, agreement around Principle 7, with the understanding provided in this Handbook, can provide a normative framework for advocacy promoting locally appropriate and durable HLP restitution programmes.

Determining the legitimacy of requisition/expropriation measures – Global political trends reflect resistance and backlash to what is seen as a threat to tenure forms other than private property. Patterns of government dispossession of traditional tenure holders has been a historic source of conflict and displacement. Acquisitions for site assembly and sale of land for purposes beyond the provision of traditional public-purpose infrastructure are taking place without adequate reparation, including HLP restitution.[223]

In recent decades, governments in MENA countries have acquired both public and private land and other properties at various scales under the pretext of "public interest" for development projects. The pattern indicates that the laws regulating such land acquisitions lack specific "public interest" criteria and do not provide sufficient mechanisms for recourse by affected parties, participation in decisions or ensure sufficient compensation. A common device across countries has seen the acquisition of lands for specific purpose that was not pursued during the statutory limit, but the land or property is not returned according to the legal requirement.[224]

These Principles serve the preventive dimension of HLP-rights application to ensure that such acquisitions do not violate the human rights of affected persons and communities, further complicating the HLP-restitution urgency besetting the region.

Common Questions

How do property and privacy rights relate?

Housing destruction during armed conflict is widespread. Frequently, refugee and displaced persons homes are intentionally destroyed as a means of attempting to prevent eventual return and restitution by those with rights over those homes and lands. The EtCHR judgment in the case of *Akdivar and others v. Turkey* addressed the crucial link between property and privacy rights in a manner clearly relevant to restitution cases everywhere. The Court held:

> "no doubt that the deliberate burning of the applicants' homes and their contents constitutes at the same time a serious interference with the right to respect for their family lives and homes and with the peaceful enjoyment of their possessions. No justification for these interferences being proffered by the respondent Government—which confined their response to denying involvement of the security forces in the incident—the Court must conclude that there has been a violation of both Article 8 of the Convention [respect of the home] and Article of Protocol 1 [the right to the peaceful enjoyment of possessions]."[225]

Hoes the fair balance doctrine apply to property rights cases?

For relevant guidance, we may need, once again, to invoke the jurisprudence of major legal systems in other regions. In determining the existence of *fair balance*, the European human rights bodies have noted there had been a violation of Article 1 of Protocol No. 1 of the ECHR when no fair balance had been struck between the interest of protecting the right to property and the demands of the general interest as a result of the length of expropriation proceedings, the difficulties encountered by the applicants to obtain full payment of the compensation awarded and the deterioration of the plots eventually returned to them.[226] However, in the European Court's jurisprudence, the examination of proportionality between individual and public interest also may deliver less than full compensation.

Useful Guidance

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Leckie, Scott and Chris Huggins. *Conflict and Housing, Land and Property Rights: A Handbook on Issues, Frameworks and Solutions* (Cambridge: Cambridge University Press, 2011);
Office of the High Representative (OHR). *A New Strategic Direction: Proposed Ways Ahead for Property Law Implementation in a Time of Decreasing International Community Resources* (Sarajevo: OHR, 2002), at: http://www.ohr.int/?ohr_archive=a-new-strategic-direction-proposed-ways-ahead-for-property-law-implementation-in-a-time-of-decreasing-ic-resources;
Türkmen, Füsun and Emre Öktem. “Major rulings of the European Court of Human Rights on Cyprus: the impact of politics,” *Mediterranean Politics*, Vol. 22, Issue 2 (2016), at: https://www.tandfonline.com/doi/abs/10.1080/13629395.2016.1175544?journalCode=fmed20.
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ECtHR Cases on restitution themes:

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ECtHR. *Cyprus v. Turkey,* Judgment, 10 May 2001, at: http://www.refworld.org/pdfid/43de0e7a4.pdf;
ECtHR. *Demopoulos and Others v. Turkey* [Grand Chamber], Decision, 1 March 2010, at: https://www.echr.coe.int/Documents/Reports_Recueil_2010-I.pdf;
ECtHR. *Loizidou v. Turkey,* Judgment, 18 December 1996, at: http://www.refworld.org/cases,ECHR,402a07c94.html;
ECtHR. *Xenides-Arestis v. Turkey*, Judgment, 22 December 2011, at: http://www.prio-cyprus-displacement.net/images/users/1/ECtHR/Xenides-Arestis%20v.%20Turkey_Just%20Satisfaction.pdf.

PRINCIPLE 8: The Human 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.

HRAH was first recognized in Article 25(1) of the Universal Declaration on Human Rights, and subsequently included in more-specific human rights standards. When the UDHR principles developed into State obligations through the Human Rights Covenants in 1966, Article 11(1) of ICESCR specifically enshrined HRAH. Everyone is entitled to housing that is “adequate.” (See **How is housing adequacy defined?** under **Common Questions** below.)

While adequate housing is a human right that universally applies to all persons, specific articulation of that human right has been made at the international level with respect to refugees and DPs and their access to, and secure tenure of adequate housing. For example, the Executive Committee of UNHCR in Conclusion No. 101 on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees, encourages countries of origin to provide homeless, returning refugees with access to land and/or

adequate housing, comparable to local standards.[227] Similarly, Principle 18 of the *IDP Guiding Principles* provide that "All internally displaced persons have the right to an adequate standard of living" and that "At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:…basic shelter and housing."[228]

State obligations and government functions deriving from HRAH include duties to take measures conferring security of tenure and consequent protection against arbitrary or forced eviction and/or arbitrary confiscation or expropriation of housing, especially for those lacking secure tenure. States are duty-bound to prevent discrimination in the housing sphere, ensuring equal treatment and access to housing, to guarantee housing affordability; regulate landlord-tenant relations and access to, and provision of housing resources suited to the needs of all, prioritizing marginalized and/or vulnerable groups, such as women-headed households, persons with disabilities, the chronically ill, migrant workers, older persons, refugees and DPs. (These requirements coincide with the **Overarching Principles** discussed above.)

CESCR has made clear that a State should discharge its obligations by prioritizing marginalized and vulnerable populations;[229] the positive obligation of States parties under both the human rights treaties and the 2030 Agenda is to identify disadvantaged sectors of the population and aim toward full realization of their human rights.[230]

Other process or accessory human rights must be respected, protected and fulfilled, in order to enable the realization of HRAH. For instance, to achieve adequate housing, everyone needs to have access to relevant information; participation; education (capabilities[231]); security of person; legal personality; and freedom from cruel, in human and degrading treatment or punishment. This last freedom could be violated under the prohibition under Article 16 of the Convention against Torture, which defines cruel, inhuman and degrading treatment or punishment, in cases where house demolitions and/or forced evictions are carried out as a punitive measure.[232] In the context of conflict, occupation or war, such acts could constitute grave breaches and war crimes.

Hence, the indivisibility and interdependence of human rights and the unitary nature of international law become visible in the case of HRAH. Both in the prevention of violations and in the remedy and restitution of HLP rights, the practitioners of the Pinheiro Principles and this handbook's users should be able to add practical value in the human rights approach to HLP restitution with a thorough understanding of HRAH.

Opportunities for Applying Principle 8

Monitoring of, and problem identification in current housing conditions – While Principle 8 is relevant at all stages of the displacement cycle—prior to, during and after displacement—users of the handbook should pay particularly close attention to the application of this principle *during* displacement. A considerable majority of the world's refugees and DPs—all of whom are potential restitution HLP-restitution claimants—reside during their displacement in conditions that fall far short of basic international minimum standards for adequate housing, access to water and services, basic criteria on habitability, security of HLP tenure rights, and others. Their conditions indicate whether a State is meeting its core minimum obligations to respect, protect and fulfil HRAH, as well as whether and how the State is performing its overarching principles of human rights treaty implementation.

Developing and implementing comprehensive rebuilding programmes linked to return and restitution – Successful restitution programmes generally will combine legal, judicial, administrative and other measures to enable refugees and DPs to return to their original homes, with rebuilding and housing

improvement programmes in which they can participate. Only in this way can the entire bundle of HLP rights of returning refugees be realised within the reparations framework. To the maximum possible extent, rebuilding activities should be formally linked with restitution programmes that apply the overarching principles of maximum of available resources, progressive realisation and international cooperation.

Also relevant is the overarching principle of non-discrimination, especially where the restoration of HRAH avoids favouritism or exclusion on any arbitrary basis. As discussed below under **Principles 12: National Procedures, Institutions and Mechanisms**, **14: Adequate Consultation and Participation in Decision Making**, **17: Secondary Occupants**, and **19: Prohibition of Arbitrary and Discriminatory Laws**, HLP restitution should never involve the effect or purpose of demographic manipulation on political, ethnic, religious or any other prohibited grounds.

Common Questions

How is housing adequacy defined?

The legal human rights definition of "adequate housing" is based on a set of human needs and human rights in shelter and residence such as consumption of clean water and access to land, as well and determiners of well-being found in the bundle of other recognised human rights. The definition was developed through broad consultation by CESCR with multiple stakeholders, civil society and States party to ICESCR. The definition was drafted and ultimately adopted by CESCR, which is the uniquely qualified legal body responsible for (1) monitoring individual States' compliance with ICESCR and (2) interpreting the content and application of the Covenant within States' corresponding obligations.

The legal definition of housing adequacy is found in CESCR GC No. 4, which elaborates the HRAH elements of security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.[233]

While these elements form the normative content of the human right to adequate housing, HRAH cannot be defined, or realized, without also fulfilling the process rights that arise from ICCPR and other human rights instruments:

- Participation and self-expression
- Education, information, capability and capacity building
- Movement, resettlement, restitution, rehabilitation, return, compensation
- Security (of persons, physical and otherwise, domestic violence, privacy).[234]

Does HRAH require the State to build housing for everyone?

The State may face situations in which it and its government and other public institutions build or guarantee the construction of housing to meet minimum core obligations. (See **What are minimum core obligations?** under the **Overarching Principle Progressive Realisation** above). However, human rights law does not require States to build housing for everyone who may request it or need it. Rather, under normal conditions, housing rights provisions require States to respect (avoid violating the human right or impeding persons from realizing that human right), protect (prevent other parties from impeding or violation that human right) and to fulfil (create conditions within society—through law, policy, programmes, budgetary allocations, land governance, market regulation and other measures, as needed) HRAH. This could—and should—include direct financing for refugee' and DPs' HLP restitution, including reconstruction. Budgetary allocations and efforts toward that end should realise HRAH progressively and to the maximum of a country's resources, including through international cooperation as enshrined in Article 11(1) of ICESCR and elaborated by the treaty's competent interpretive body (CESCR).

Useful Guidance

Hassine, Khaled and Scott Leckie. *The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons: A Commentary* (Leiden: Martinus Nijhoff, 2015);
Housing and Land Rights Network (HLRN) – Habitat International Coalition (HIC). "The Housing and Land Rights monitoring "Toolkit," at: http://www.hlrn.org/toolkit/;
NRC and International Federation of Red Cross and Red Crescent Societies (IFRCRCS). *The Importance of addressing Housing, Land and Property (HLP): Challenges in Humanitarian Response* (Geneva: NRC and IFRCRCS) , at: https://www.nrc.no/globalassets/pdf/reports/the-importance-of-housing-land-and-property-hlp-rights-in-humanitarian-response.pdf;
OHCHR. The Right to Adequate Housing Toolkit (Geneva: OHCHR, regularly updated), at: http://www.ohchr.org/EN/Issues/Housing/toolkit/Pages/RighttoAdequateHousingToolkit.aspx;
CESCR, GC 4: The Right to Adequate Housing (Art.11 (1)) 1991;
UN-Habitat Documentation Centre, at: http://mirror.unhabitat.org/list.asp?typeid=48&catid=282.

PRINCIPLE 9: The Human 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.

The right to freedom of movement and residence is recognised in numerous human rights standards, including UDHR Article 13(1), ICESCR Article 12(1) and the ACHPR's Article 12(1). The ACHR guarantees the human right to freedom of movement, stating in Article 26, that:

> (a) Everyone lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force.
>
> (b) No State party may expel an alien lawfully in its territory, other than in pursuance of a decision reached in accordance with law and after that person has been allowed to seek a review by the competent authority, unless compelling reasons of national security preclude it. Collective expulsion of aliens is prohibited under all circumstances.

Beyond the question of mere movement, but related to it, is the question of asylum. The ACHR's Article 28 guarantees that "Everyone has the right to seek political asylum in another country in order to escape persecution." However, it qualifies this objective of free movement with certain limitations. It denies the right to seek asylum "invoked by persons facing prosecution for an offence against public order under ordinary law." The same article provides that "Political refugees may not be extradited."[235]

The CCPR's GC No. 27 on freedom of movement also notes that:

> Everyone lawfully within the territory of a State enjoys, within that territory, the right to move freely and to choose his or her place of residence….The right to move freely relates to the whole territory of a State, including all parts of federal States. According to Article 12, paragraph 1 [of ICCPR], persons are entitled to move from one place to another and to establish themselves in a place of their choice. The enjoyment of this right must not be made dependent on any purpose or reason for the person wanting to move or to stay in a place….Subject to the provisions of Article 12, paragraph 3, the right to reside in a place of one's choice within

the territory includes protection against all forms of forced internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory.[236]

Finally, the *IDP Guiding Principles* also affirm internally displaced persons' option of returning to their places of origin or of habitual residence, or to resettle voluntarily in another part of the country.[237]

Opportunities for Applying Principle 9

Return planning / Voluntary assisted return – The political context, and the urgency this imposed on the return process, can limit the "voluntary" dimension of return, depending on the context. In a recent assessment of return cases, all, with the except for Iraq, involved voluntary assisted return (VAR) schemes that followed political agreements expected to end the conflicts. Together with other politically determined arrangements, such as an election or population census, or the desire by host countries to see refugees leave, the political environment gave emphasis to the solution of return over other options and imposed an urgency on the return process. That did not leave enough time or sufficient resources to plan and implement reconstruction and reintegration activities properly in the countries of return.

Rather, facilitating the mass return of refugees through the VAR schemes, UNHCR was compelled to respond more to the political interests of its donors and host governments, than it was to the actual interests of the majority of its "persons of concern." Notable examples are Cambodia, South Sudan, and Bosnia-Herzegovina.[238] However, such political conditions can reoccur anywhere, signalling caution for practitioners to ensure adequate preconditions and applying these Pinheiro Principles before engaging in VAR.

While the Afghan refugees in Pakistan were not subjected to the same kind of direct pressure to repatriate, the support they received until the collapse of the Communist regime in Kabul 1992 was gradually phased out and was replaced by increasing restrictions that culminated in their 2001 eviction from camps, albeit not from the territory of Pakistan. In Iran, restrictions on access to services and freedom of movement were increasingly imposed after 1992, which led to outright deportation (forced repatriation) of some 490,000 Afghans in 2007–08.[239]

Common Questions

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

In practice, all human rights are mutually dependent. Therefore, it is difficult to imagine how HLP restitution could take place without all three of these human rights respected, protected and fulfilled in a comprehensive and integrated way.

Could a policy favouring return ever limit freedom of movement in the interim?

While these rights (freedom of movement, return, restitution) are mutually dependent, and must accompany voluntary choice to exercise them, they are not meant to be mutually exclusive. However, return and restitution may be lengthy processes.

In Iraq, for example, the State policy toward DPs favours return, rather than allowing DPs to choose to settle in their place of displacement. In the meantime, many social and institutional barriers impede security of tenure for displaced populations *in situ*. Host communities perceive them as a burden and keep pressure on DPs to return home as soon as possible. In particular, hosts resist formal, legally binding, longer-term lease arrangements for displaced renters. Local courts rarely enforce rental agreements.

Rents are soaring, especially in Baghdad and the Kurdish Region and many DPs have squatted in unfinished buildings or rent in informal settlements. As well, DPs living outside of camps have experienced increased debt levels and decreased reliance on savings, suggesting the gradual depletion of resources.[240]

That situation is not sustainable. Given the long history of displacement in the country, many DPs have faced multiple displacements, land registries and much property has been destroyed in former ISIL-held areas. Confidence in the restitution process may decline also amid resource constraints and ambiguity about which authorities are responsible for HLP restitution in disputed areas.

In response to these and other challenges, the Shelter Cluster maintains HLP Focal Points at the governorate level to support HLP initiatives across Iraq. The HLP Sub-Cluster serves as the Protection Mainstreaming Focal Point for the Shelter Cluster within a Humanitarian Response Plan (HRP) and pooled funding mechanisms. Among the many priorities, data collection, restoration of civil documentation, legal aid and advocacy are among the vital non-material service delivery priorities to ensure adequate housing and, especially, to prevent and remedy discrimination and forced evictions in the interim.[241]

Is freedom of movement only relevant in countries of origin as far as restitution rights are concerned?
No. Freedom of movement applies when refugees are resident in a host country, as well as when refugees seek to exercise restitution rights in their own country upon return. The right to freedom of movement is a human right enshrined in both ICCPR and the Refugee Convention, not exclusively for, nor reduced (derogated) for refugees and DPs.

What are some limits on the human right to freedom of movement?
Freedom of movement is not a non-derogable right, which means that it can be subject to restriction in exceptional circumstances. However, applying the overarching principles, restrictions should not be discriminatory or arbitrary, outside the rule of law. Several illustrative factors limiting or qualifying the human right to freedom of movement include:

- Instances of derogation for protection from harm (evacuation);
- State-to-state arrangements and reciprocity over-ride freedom of movement;
- Restrictions consistent with the rights and responsibilities of refugees;
- Lawful detention (restricting personal liberty);
- Forced movement and population transfer (including forced expulsion, the implantation of settlers and demographic manipulation), which are absolutely prohibited.

CCPR has interpreted that the permissible limitations to the rights protected under ICCPR Article 12 (freedom of movement) must not nullify the principle of liberty of movement, and are governed by the requirement of necessity provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals, democratic society and respect the rights and freedoms of others, and are consistent with the other human rights.[242] The entry of an alien to the territory of a State other than here/his own may invoke certain movement restrictions, provided that those restrictions are in compliance with the State's other international obligations. In any case, any restrictions must not impair the essence of the right,[243] and must not reverse the relation between the right and restriction, between norm and exception.[244] The laws authorizing the application of restrictions should stipulate precise criteria so as not to allow unfettered discretion on those charged with their execution.

However, jurisprudence has verified that, even in the case of a non-national who entered the State illegally, but whose status has been regularized, that person must be considered to be lawfully within the

territory and not subject to restrictions beyond those of citizens,[245] notwithstanding applicable national security and regular restrictions.[246] The enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place. Any restrictions must be in conformity with the relevant domestic legal, administrative and judicial rules and standard practices, while, of course, applying the overarching principles of human rights implementation. Any restrictions also must protect against all forms of forced displacement and confinement of persons to a particular territory.[247]

Restrictions on freedom of movement must conform also to the principles of proportionality and fair balance (discussed above). Hence, any restrictions must be proportionate and limited to their protective function and be the least-intrusive instrument available.[248]

Some prohibited practices and conditions on movement include unduly requiring individuals to apply for permission to change their residence; seeking the approval of local authorities in the place of destination; impeding applicants' access to competent authorities; restricting information regarding requirements; as well as impediments such as high fees for processing travel or residency documents and delays in processing such applications, whether to move within or leave the country.[249] Noatbly, however, displaced Syrians in Lebanon frequently have been subjected to exclusive curfews and bans from public spaces by municipalities and local authorities outside the provisions of human rights and local law.[250]

Useful Guidance

Harild, Niels, Ager Christensen, Roger Zetter. *Sustainable Refugee Return: Triggers, Constraints, and Lessons on Addressing the Development Challenges of Forced Displacement* (Washington: World Bank Group, 2015), at: http://documents.worldbank.org/curated/en/542611468188337350/pdf/99618-WP-PUBLIC-Box393206B-Sustainable-Refugee-Return-15Sept-WEB-PUBLIC.pdf;
CCPR. GC 27: Freedom of Movement (Art.12), 1999, at: http://www.refworld.org/docid/45139c394.html;
Kälin, Walter. "Supervising the 1951 Convention Relating to the Status of Refugees: Article 35 and Beyond," in Feller, Erika, Volker Türk and Frances Nicholson, eds. *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (2008), http://www.refworld.org/docid/470a33c00.html;
Leckie, Scott. "Housing and Property Issues for Refugees and Internally Displaced Persons in the Context of Return, Key Considerations for UNHCR Policy and Practice," *Refugee Survey Quarterly*, Vol. 19, No. 3, (2000).

SECTION IV. VOLUNTARY RETURN IN SAFETY AND DIGNITY

PRINCIPLE 10: The Right to Voluntary Return in Safety and Dignity

10.1 All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.

10.2 States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands 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.

As noted in the **Introduction**, recognition of refugees' and DPs' right of return in MENA dates back millennia. Section IV of the Principles reaffirms and develops the right to voluntary return in safety and dignity in the contexts of state building, peacebuilding, post-conflict and TJ, as well as modern statecraft. This Principle underscores the essential importance and intimate relationship between the individual and collective right to return HLP restitution. The right of return to one's country, city, village or region is well established in international law. UDHR recognizes that "everybody has the right…to return to his country."[251] ICCPR guarantees that "no one shall be arbitrarily deprived of the right to enter his own country."[252]

(See Principle 10.2 discussion of time-limitations under **Principle 9**, answering the question: ***What are some hidden or indirect forms of discrimination?***)

In cases of conflict, occupation and war, this right to voluntary return in safety and dignity is developed as Rule 132 of the Customary Rules for implementing IHL: "Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist."[253] The Fourth Geneva Convention provides that evacuated persons must be returned to their homes as soon as hostilities in the prescribed area have ceased.[254] The right to voluntary return in general is recognized in other treaties, such as the Panmunjom Armistice Agreement and the Convention Governing Refugee Problems in Africa.[255] Several military manuals also emphasize that displacement must be limited in time and that DPs must be allowed to return promptly to their homes or places of habitual residence.[256]

This right is also recognized in peace agreements and agreements on refugees and DPs, for example, with respect to the conflicts in Abkhazia (Georgia), Afghanistan, Bosnia-Herzegovina, Croatia, Korea, Liberia, Sudan and Tajikistan.[257] Regional treaties applicable to MENA affirm the right to return, including ACHPR[258] and ACHR,[259] as consistent with norms in other regions.[260]

One of the first iterations of the right to voluntary return in the UN came in 1948 with regard to the situation in Palestine, with the UNGA affirming the right of Palestine refugees "wishing to return to their homes and live at peace with their neighbours…to do so at the earliest practicable date." In turn, resolution 194 instructed the UNPCC to facilitate their "repatriation, resettlement and economic and social rehabilitation…and the payment of compensation."[261]

The UNSC subsequently has reaffirmed the right to return to one's home in resolutions addressing conflict-related displacement in such diverse cases as Abkhazia, Angola,[262] Bosnia-Herzegovina,[263] Cambodia,[264] Central African Republic,[265] Chad,[266] Croatia,[267] Republic of Georgia,[268] Kosovo,[269] Namibia[270] and Rwanda[271] and South Sudan.[272] In the greater MENA region, SC resolutions have affirmed the right of return for refugee and DPs also in Azerbaijan,[273] Cyprus,[274] Iraq,[275] Kuwait,[276] Syria,[277] Tajikistan,[278] Western Sahara[279] and Yemen.[280]

Other United Nations bodies have also reaffirmed the right to return to one's home. For instance, the UNGA repeatedly has reaffirmed or recognized the right to return to one's home in resolutions concerning Algeria,[281] Cyprus[282] and Palestine,[283] among other States.[284]

Elaborating the overarching principle of non-discrimination in the context of refugees and DPs, the CERD Committee has reaffirmed the right to voluntary return stating: "all...refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety."[285] Also on the subject of racial discrimination, States at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance reaffirmed their universal recognition of "the right of refugees to return voluntarily to their homes and properties in dignity and safety, and urge[d] all States to facilitate such return,"[286] a principle reaffirmed also at the 2009 Durban Review Conference.[287]

The UNHCR Executive Committee consistently has called for formal guarantees of returning refugees' safety and stressed their importance of not penalizing them for having left their country of origin. The *right of a refugee to return to her/his country* is logically coupled with her/his HRAH.[288]

The *forced* return of refugees and other DPs is, *prima facie*, incompatible with international human rights standards, as forced repatriation violates the *non-refoulement* principle. he The Refugee Convention's Article 33 (1) provides that "No Contracting State shall expel or turn back (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where [her/]his life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion."[289]

Similarly, the *IDP Guiding Principles* provide that "Internally displaced persons have…[t]he right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk."[290] UNHCR's subsequent *Agenda for Protection*[291] expressly highlighted the importance of corresponding effective measures for HLP restitution within the context of voluntary repatriation, the need for effective information to refugees regarding restitution procedures, and the crucial nature of equal rights for returnee women to HLP restitution.

Opportunities for Applying Principle 10

Influencing the contents of peace agreements – As mentioned under **Section I: Principle 1: Scope and Application** above, poses an opportunity and challenge to ensure that the terms of return allow no unlawful discrimination, or prevent the return of any refugee or DPs on a discriminatory basis. The terms should correspond to those that apply to any State.

Post-conflict and peacekeeping operations – The domestic and extraterritorial partners in the process of peacekeeping must ensure implementation of the age-old right to voluntary return in safety and dignity. That will involve protecting returnees from reprisals from hostile political or other ideological adversaries, as well as avoiding returning them to situations in which they will face such threat. The problem of forced returns, discussed above, should be avoided and form a prominent feature of operations and planning for refugees' and DPs' return.

Statements from sources in parties with sub-national, parochial and other un-state-like conduct in government, police, military and other factions should indicate the potential hazards that face those holding the right to voluntary return in safety and dignity.[292]

Ensuring non-discrimination in the return of refugees and DPs – The UN Secretary-General and his Special Representative on IDPs have reported on measures in the context of numerous conflicts to comply with the obligation to facilitate the voluntary and safe return and reintegration of DPs without discrimination, including:

- Measures to ensure a safe return, in particular, mine clearance;
- Provision of assistance to cover basic needs (shelter, food, water and medical care);
- Provision of construction tools, household items and agricultural tools, seeds and fertilizer; and
- Rehabilitation of schools, skills training programmes and education.[293]

Administrative measures may include amnesties as a measure to facilitate return, as a guarantee that no criminal proceedings will be brought against returnees for acts such as draft evasion or desertion. The granting of amnesty is now considered a norm of customary IHL by virtue of State practice.[294] However, amnesties should not cover the commission of war crimes and crimes against humanity.

In the process of taking these measures, the customary IHL prohibition of adverse distinction—the IHL equivalent of non-discrimination—applies to DPs in all circumstances, thereby underlining the importance of non-discrimination against returnees as well.[295] Hence, all IHL rules protecting civilians apply equally to displaced civilians who have returned.[296] This principle has been recognized also in numerous treaties and other agreements,[297] national legislation and official statements,[298] and practice of the UN and international conferences.[299]

During the preparation of voluntary repatriation/return plans – Those entrusted with preparing voluntary repatriation/return plans should address restitution considerations explicitly within such plans and outline specific restitution rights and responsibilities. Refugees and DPs who have expressed a willingness and desire to return should be closely involved in shaping the eventual HLP-restitution arrangements. UN and other agencies responsible for facilitating voluntary return and repatriation, in particular UNHCR, should ensure the distribution of restitution information packets to all returnees, outlining precisely which existing restitution rights and procedures are in place to facilitate access to their original homes and lands, and how these rights can be enforced in the event of a housing, land or property dispute with a secondary occupant.

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

In the MENA region, it is rare to find advance surveys of HLP subject to restitution. This is partly due to the dynamics of the refugee and displacement situation, especially without a political settlement or peace

agreement permitting or requiring such enumeration. However, in certain long-standing refugee and displacement situations, the HLP has been surveyed, indicating the scope of the restitution task. For example, the dispossession of land alone that is subject to restitution in Palestine can be quantified at some 2,699,000 ha. In Western Sahara, the land area subject to restitution is roughly estimated at 21,280,000 ha.[300] The total of affected persons in the MENA region holding HLP-restitution rights is conservatively estimated at 31 million.[301]

Common Questions

Does restitution necessarily mean physical return and repossession of one's original home or lands or are other intermediate outcomes also considered as durable solutions?

This remains one of the most complex questions concerning restitution. Restoring possession of one's original home is the preferred solution, and great care is necessary when alternatives to physical repossession are systematically considered or implemented by any party. Restitution also includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship and restoration of employment.[302]

First and foremost, it must be recognised that the right to return for refugees or DPs is not an *obligation* to return, but to the restoration of values, including property, and the type of tenure previously enjoyed. Return cannot be restricted, prescribed and, conversely, cannot be imposed as a condition of restoring HLP rights. Those rights remain valid, whether or not return ever takes place.

In South Africa's restitution experience, the concept of *equitable redress* has been an important form of restitution that allowed many rights holders to access restitution rights without necessarily re-inhabiting their former homes and lands. It is important to note that, in some cases, only a small fraction of those with successful restitution claims. In Kosovo, only some 12% opted for physical repossession of their properties, largely constrained by serious security threats were they to return to their legitimate homes. More than 40% of those making restitution claims in Kosovo settled their cases with secondary occupants through mediation, which involved either selling, leasing or renting the properties in question. (See **Principle 17: Secondary Occupants** below.).

Is it possible to address return and repatriation issues separately from HLP restitution?

Experience has shown that voluntary repatriation operations tend to be less successful if housing and property issues are left unattended for too long, particularly if refugees are not able to recover their HLP in the country of origin.[303]

Alleged violations of this rule have been condemned, in particular, by the UNSC, with respect to Croatia and by the UNCHR with respect to Bosnia-Herzegovina.[304] UNCHR has condemned violations of DPs' property rights because they "undermine the principle of the right to return."[305] This point was made by the UN Sub-Commission on Human Rights also in a 1998 resolution HLP restitution in the context of refugee and IDP return.[306] The fact that violations of property rights may impede implementation of the right to return further supports the customary nature of this rule.[307]

Who pays for voluntary repatriation and restitution programmes?

As a matter of principle consistent with the concepts of liability and reparation, the authors and beneficiaries of situations that generate refugees and DPs should be accountable to restore the lost values and damage they have caused. While those processes may be prolonged and/or elusive, the State—with

its domestic and international partners—remains the principal and immediate duty bearer and guarantor of reparation for right-bearing victims.

In practice, the costs are also a shared responsibility. Whereas the State in the country of origin is the principal duty holder to ensure HLP restitution, a combination of national budgets, international cooperation and assistance, international finance institutions, charitable and philanthropic donors and private-sector actors is likely. (See **Maximum of Available Resources** under **Other Overarching Principles** above.) However, one should not forget or underestimate the ultimate costs, losses, damages and other values that the refugees and DPs forfeit, never subject to restitution or compensation.

Under **Principle 10.4** and the **Overarching Principle: International Cooperation and Assistance**, States obliged to restore returning refugees' and DPs' HLP rights should request financial and technical assistance from the international community as needed. Where State institutions are unable to manage HLP-restitution programmes themselves, the Principles and this handbook identify channels for sharing and enlisting critical expertise, capacity and resources to fulfil their State-like duties.

The MENA region already has innovated approaches, including combinations of international cooperation and private-sector contributions to finance the restitution process. One domestic private-sector example is the "Loan of the Displaced," which Bank of Beirut and Arab Countries (BBAC) provided to the Lebanese Ministry of the Displaced, BBAC, operating under the slogan: "Your Caring Bank," announced its contribution to the HLP restitution effort as a stroke of "social corporate responsibility aiming at contributing to the sustainable economic and social development of Lebanon." BBAC loaned the Ministry up to 60% of the speculative value of the restored property at an exceptional interest rate (1.62%), with a repayment period up to 25 years. This arrangement was designed to allow the Civil War-displaced households to reconstruct, renovate, repair or improve their houses in any of the Lebanese villages devastated by the displacement before 1990.[308]

Donors and financing institutions are usually self-interested, seeking returns unrelated to long-term public needs and preferences. The overarching principle of self-determination and refugees' and DPs' FPIC are pivotal to decisions and financial arrangements negotiated with external parties. The best practice in such arrangements requires the affected parties to realise their human right to participation in the decisions that affect them. The question "who pays for restitution" must involve those who already have paid with their lives, livelihoods and property in negotiating financial solutions.

Lebanon's reconstruction provides other lessons, whereas visions of a renewed central Beirut have resulted in the effective dispossession and permanent displacement of traditional inhabitants. The personal and national toll of loss from that mode of reconstruction has not been fully quantified. External investors with private interests have favoured solutions proffered by private-sector businesses linked to their own countries, as well as Lebanese investors with dual or multiple national affiliations.

In the context of recurring crisis, the impulse to defer to external interests manifested as donor pressure to impose temporary displacement solutions in the form of prefabricated housing, despite contrary advice of local organisations, including the Order of Engineers and Architects.[309] For example, in 2006, the affected Lebanese, learning from other experience, clearly resisted extraterritorial interests, saying that they did not want prefab structures; they wanted homes.[310] The general tendency in global experience has been for such supposedly interim solutions to become permanent conditions of inadequate housing.[311]

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SECTION V. LEGAL, POLICY, PROCEDURAL AND INSTITUTIONAL IMPLEMENTATION MECHANISMS

Section V of the Principles provides specific guidance as to how best to ensure the right to HLP restitution in practice. Section V was developed bearing in mind some of the "best practices" that have been devised at the global policy level to overcome these common obstacles to achieve restitution. **Principles 11–22** will be particularly relevant to users of the handbook responsible for the implementation of restitution programmes in the field.

The Principles in Section V invoke the premise stated in the introduction to this handbook; that is, that HLP restitution requires the presence of the State with institutions operating and capable of managing the exigencies of the restitution process. These institutions must operate under a state-like administration in the sense that they implement their human rights obligations as set forth in the Overarching Principles and the Specific Rights provided above. In the absence of the State and a government operating under these norms, the restitution process cannot take place, unless the State is declared in *debellatio* (destroyed, vanquished) and, therefore, absent. In such a case, another State, combination of States or multilateral party may have to assume responsibility for the territory to ensure HLP restitution.

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.

General principles of international law, *jus cogens* (peremptory norms) and *erga omnes* principles align with human right treaty obligations to form a unitary system of norms and correspondence obligations of parties that represent States. All parties look to the States to ensure that all HLP-restitution procedures, institutions, mechanisms, legal frameworks and outcomes 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 operationalised in all spheres of government and international organisations' service to the State and its organs.

Principle 11 acknowledges the limitations of many existing policies and actions and present the elements of a plan to restore HLP to refugees and DPs in any situation resulting in the violation of HLP rights. Insomuch as the mass exodus of internal and external displacement of citizens is an indicator of State failure, the restitution of HLP rights forms an important and essential step indicating rehabilitation of the State as such.

Application of this Principle should assist in strengthening policy coherence aligned with human rights and ensure coordinated programmes and actions that align interim humanitarian assistance and longer-term and institutional-building sustainable development approaches within the human rights framework. Such policy coherence reflects the global thinking developed through prolonged practice over a wide geographical scope.[312]

In broad terms, Principle 11 sets out the baseline for determining the adequacy of whatever national restitution procedures, institutions, mechanisms and legal frameworks may exist by urging States to

ensure that these are compatible with international human rights, refugee and humanitarian law and related standards. The Pinheiro Principles provide an essential tool to check our references before embarking on HLP restitution.

To do so will require intensive national legislative reviews to be undertaken, combined with the development of expertise in the country of origin on the meaning and status of HLP rights within these various legal regimes. Through its reference to "other standards," Principle 11 re-affirms the necessity of streamlining national restitution rules and regulations with those found in international human rights, refugee and humanitarian law as reflected in these Principles. That review process may also find certain standing laws to contradict minimum international standards, especially those explicitly excluding refugees' and DPs' return and/or HLP-restitution rights.[313]

Implementing Principle 11, therefore, provides the basis for planning next steps, including division of labour, resource mobilization and budgeting. It also should help to characterise the HLP rights issues and violations to address upon restitution, determine the level of effort needed to complete the process, as well as the evaluate the adequacy of whatever national restitution procedures, institutions, mechanisms and legal frameworks may exist.

Opportunities for Applying Principle 11

When country (i.e., the State and its government) of origin is committed to return – This scenario reinforces the necessity of the restoration and maintenance of the State as the principal actor and duty bearer in the wider scenario of PP implementation. Principle 11 can be used as a blueprint for national-level analysis of the consistency of existing laws, procedures, judicial competencies and so forth, within the relevant international standards. It also serves as a basis for ensuring that, if any new restitution measures are undertaken by countries committed to return, those, too, are compatible with international perspectives on these issues, including the Principles.

Providing legislative drafting assistance – If the government in a State of refugee or IDP origin requested the users of this Handbook to assist in the drafting of amendments to existing law or proposed new restitution or related laws, the terms of due diligence will require them to scrutinise a range of national legislative sectors to determine their compatibility with international standards, including:

- Constitutional housing rights and relevant human rights provisions;
- Abandonment laws;
- Housing, land or property laws adopted during the armed conflict;
- Landlord and tenant law;
- Land laws;
- Laws regulating eviction;
- Laws regulating security of tenure;
- Laws on adverse possession;
- Laws concerning housing repairs and improvements;
- Laws addressing housing credit and finance;
- Laws governing state property including social housing resources;
- Laws on public health and housing; laws concerning the restoration of housing or property rights;
- Laws governing property sales, exchanges and leases housing and land expropriation laws;
- Laws determining succession rights to land and housing, particularly the rights of women;
- Laws governing communal ownership of land or housing; and
- The position of formal law vis-à-vis customary land titles and ownership.[314]

What if domestic restitution laws or procedures are incompatible with the Principles?
Although the Principles do not constitute a treaty, they are based upon existing rights and obligations recognized within treaties and other binding laws. Most, if not all, States have ratified human rights, humanitarian law and other treaties, and maintain domestic legislation on subject related to these

Principles. (See **MENA State Treaty Ratification Status** in Annex.) Therefore, this Principle provides a basis upon which to ground the view that States cannot intentionally develop restitution laws or procedures that are incompatible with international standards, nor can they justify violations of international law based on the content of domestic law. This view is bolstered, of course, by VCLT, which clearly provides for the principle of *pacta sunt servanda:* "Every treaty in force is binding upon the parties to it and must be performed by them in good faith"[315] and the perspective "a State may not invoke the provisions of its internal law as justification for its failure to perform a treaty."[316] (See also ***Domestic application of relevant treaty provisions*** under **Rule of Law** above.)

Is the harmonisation of national and international law ever imposed?

The imposition of law upon governments unwilling to accept or enforce HLP restitution rights of returning refugees or DPs is uncommon and rarely desirable, even if it were possible. Nonetheless, this has occurred on certain occasions where the State is unable to carry out this legally required function. In the case of Bosnia-Herzegovina, for example, when local authorities initially refused to amend discriminatory housing and property laws, the OHR was forced to impose new laws that were fully compatible with international standards.[317]

How are customary laws viewed through this Principle?

The application of customary laws pertaining to tenure, property ownership, land use, inheritance and other relevant subjects is common throughout much of the developing world. Users of this Handbook will need to familiarise themselves with the scope and meaning given customary law and, where appropriate and consistent with international standards, utilise it as a potentially useful tool in resolving HLP disputes and ultimately securing restitution rights. In many countries, such customary law and regulation can provide fair, unbiased and equitable solutions to a range of HLP disputes.

When existing national legal systems are not effectively functioning in a timely, accessible and fair manner, common [traditional/*`urf*] law may provide effective alternative remedies, either as an interim measure, or in a manner that complements the existing official system. When customary mechanisms are relied on to play a constructive role, they must be:

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

It is important ultimately that the affected persons and communities are able to rationalize the HLP-restitution outcomes on the basis of authoritative criteria, as sought in the "satisfaction" element of reparations.[318]

Reliance on customary norms can be extremely complex and sometimes difficult to understand by those from other countries or regions. HLP restitution through customary norms and practices in areas of origin can have several advantages, especially if the local land administration and dispute-resolution mechanisms are sufficiently functional, and local management can be effective and at a reasonable cost to the State. On the other hand, weaknesses of using customary systems may arise if they are in conflict with statutory law, confer weaker rights for women than men, where jurisdiction is in doubt, if processes are poorly documented and/or if local authorities have difficulty dealing with new values. (Note the

example of Darfur Land Commission under **Principle 13: Accessibility of Restitution Claims Procedures** above.)

Useful Guidance

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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.

Applying Principle 11.1 on compatibility, States should establish national guidelines and strategies that ensure the effectiveness of all relevant HLP restitution procedures, institutions and mechanisms, including guidelines pertaining to institutional organization; staff training and capacity development; management of caseloads; methods for the quantification of losses, costs and damages; investigation and complaints procedures; verification of property ownership and other possessory rights within the continuum of HLP tenure; 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 above-cited overarching principles of human rights implementation.

Consistent with the overarching human rights implementation principles cited above and, in particular the principle of self-determination, States and partner in the field should ensure that all HLP restitution procedures, institutions and mechanisms align with the self-determined policies and institution-building objectives of the central sphere of government and ensure that it reflects the expressed needs of the affected subnational groups.

This principle calls for conscientious respect for deference to determinations of indigenous representation and democratic leadership of the nations, peoples and communities concerned. States should provide their good offices to ensure that such nations and peoples within the State have the capacity and opportunity to express and pursue their self-expressed development objectives. Such determinations should be consistent with the State's individual, collective, domestic and extraterritorial obligations to respect, protect and fulfil human rights, mediating diverse interests consistent with sustainable development and peacebuilding, among other policy objectives outlined in these Principles.

Principle 12 recognises that effective and competent judicial and administrative procedures for considering restitution claims can be critical cornerstones in efforts supporting the implementation of housing and property restitution rights. Though the precise form that this will take may differ from country to country, such measures will be required for any restitution programme to be carried out in an orderly, legally consistent and comprehensive manner. The absence of effective, impartial and accessible judicial or other effective remedies can compromise the restitution process severely. Judicial bodies play a special role in upholding the credibility and fairness of the entire restitution process. This is particularly the case

in post-conflict situations where internal political divisions render domestic institutions incapable of effectively administering restitution programmes, either due to institutional bias, or due to a lack of capacity and resources. Indeed, conflict often results in a non-existent, malfunctioning or severely over-burdened judicial system where fair and impartial procedures for resolving HLP disputes are unavailable.

Even where the local judicial institutions function normally, however, the circumstances and caseload involved in restitution efforts following large-scale displacement may make resolving HLP disputes through the courts unviable. In Iraq, for example, Iraq's CRRPD (now PCC) has undergone several adjustments, including acts of Parliament, to streamline adjudication and increase the capacity of chambers to handle claims.

From such experiences, we have learnt that numerous factors can impede the effectiveness of national and local institutions and elude understanding of what actually is happening on the ground with respect to land and property relations, including:

- The diversity within, and frequent changes across the continuum of land tenure throughout the country, including and especially the informal land tenure systems and the typical lack of reliable cadastres and land registries for administering such lands and properties;
- Disconnect between the formal State land tenure laws and the way land and property relations are actually managed on the ground;
- Multiple ways in which communities manage land and property relations differing from region to region and, in urban environments, even from neighbourhood to neighbourhood;
- The whole picture of land management may have drastically changed during displacement and conflict, and what people knew about land may no longer apply;
- The interests that different groups may have in a volatile and chaotic post-conflict situation in pushing certain narratives on land (e.g., to preserve or maximize HLP acquisitions made during the previous period, or claims for losses subject to restitution claims).

Opportunities for Applying Principle 12

Country HLP-restitution Assessments – An early country assessment should include several features, including an inventory of current housing stock, a mapping of the types of tenure operating in the country and the local changes that have taken place since the displacements took place, a demographic profile of the prospective returnees, identification of underlying causes of the displacement or refugee flight, and analysis of the political economy of the country.

The assessment also should determine what capacity may be needed by public institutions in all spheres of local, regional and central government (e.g., training, cadastre coverage, registries and databases, etc.). A review of the legal framework would be essential to understand how current laws would affect HLP restitutions and ensure secure tenure upon return. In the course of eventual HLP-restitution, certain categories of human resources will be needed to affect return and restitution, ranging from judges to notaries. An assessment of the availability and quality of these professions would also be important to guide next steps.

Empirical work likely would be needed to clarify what has been done so far, and what has yet to be done to achieve HLP restitution, and what impact policies are likely to have on the ground to enable peacebuilding and sustainable development that ensures progressive realisation of ESCR. The research should provide a clear understanding of the HLP issues that have arisen in the context of the displacement crisis and how they are likely to affect future durable solutions for the displaced populations.

Country assessments should apply a political-economy approach that identifies how the power dynamics within the restitution area and the country, more generally, affect the HLP-restitution issues and potential hazards and oppositional forces. The information gathered should contribute to future planning for durable solutions and the formulation of policy recommendations on how to address the HLP issues identified in the study.

Typically, the HLP-restitution country assessment process begins with a comprehensive literature review that informs the design of interview questions and focus group discussion (FGD) guidelines. The researchers should conduct interviews and FGDs with displaced populations in the affected regions of the country and/or where the refugee communities are found, if outside the country.

In the case of investigations toward a preliminary assessment in Iraq (2014–16), IOM undertook an initial HLP assessment effort, based on a limited number of focus group discussions with selected IDPs. The assessment focused on five locations throughout Iraq, but with a specific focus on the Kurdish Region of Iraq as the main locus of displacement.[319] IOM Rapid Assessment and Response (RART) teams interviewed every participant individually before the FGDs, in order to obtain information on personal circumstances related to HLP issues, before posing questions within the wider community dynamics of the FGDs. They conducted the consultations as follows:

Individual interviews	**1.** Individual displacement history
	2. Property and land ownership before displacement
Focus Groups	**3.** HLP situation since displacement
	4. Existing conflict mediation and property dispute before the current wave of displacement
	5. Expectations for prospective HLP solutions upon return

Despite the relatively small respondent group, the the initial, relatively impressionistic findings were sufficient to indicate that the most-recent displacement crisis had generated multiple HLP issues, but a broader survey was still needed to confirm the scope of the HLP issues and provide more local specificity about particular challenges that the groups of DPs faced in various locations.

That survey was to be carried out as soon as possible by the Iraq government with the support of the international community. The findings and their preferred timeliness would ensure that the results be available for policymakers that need to start posing solutions to the ongoing displacement, once the security situation improved in the affected locations. With this preliminary assessment, practitioners then could prepare the next stages for return and restitution.

A general framework for a country assessment in the preparatory stage of HLP restitution normally would contain the following features:

1. Background of the crisis and return dynamics
2. Summary of the national HLP framework as well as land tenure system(s);
3. Overview of violations of HLP rights according to national and international law and the context in which these violations took place;
4. Overview of the main issues preventing the recovery of lost HLP (including in law), applicable customary/traditional practices, political and/or social obstacles, review of the political economy;
5. Presentation and analysis of relevant responses to the HLP violations to date, with a particular focus on efforts to secure restitution rights, including administrative and/or judicial structures set up to deal

with large-scale secondary occupation, dispute resolution mechanisms, compensation schemes, and other characteristics;
5. Conclusion with an inventory of HLP-rights restitution challenges and opportunities.

This overview can be followed by deeper and more-specific assessments in future, as needed.

In a more-targeted scope, UN-Habitat contributed to the remedial effort with a city profile of Aleppo in 2014 that assessed the damage resulting from the siege by government forces of the opposition-held city. It helped determine the degree of urban functionality, changes in the economy and service provision and set priorities for intervention amid the destruction of the city.[320] During the massive destruction during the second siege of 2016, UN-Habitat still closely monitored the situation through weekly analysis of satellite imagery. Following the city's capture by the Damascus government, the agency was able to resume physical surveys and HLP assessments.

In Iraq, UN-Habitat was able to provide essential information through a rapid assessment of Mosul in early 2017, while that city was the focus of armed conflict that resulted in massive destruction and displacement, evaluating the overall destruction, as well as key infrastructure and public.[321] That assessment was aided by a more-comprehensive multi-sectoral city profile of the embattled city completed in the previous year.[322]

Assessing land-management policies and institutions in the affected areas, including any land-dispute resolution mechanisms in place – If and when the situation permits the displaced population to start returning, the policies and institutional realities on the ground must be able to address the HLP issues. This may mean managing disputes with secondary occupants and counterclaimants. It would be useful to determine what has remained of the land administration, including the land-management institutions, in the affected areas. That would help determine what would be required to re-establish or rehabilitate them quickly if and when the security situation allows. This would require an assessment of the land dispute-resolution mechanisms; i.e., courts, specialised commissions and the actors supporting the court system (lawyers, property registration, notaries, national/civil police, Ministry of Finance, etc.).

(See also Assessment of Baghdad Central Real Property Registry under **Principle 15: Housing, Land and Property Records and Documentation** below.)

Re-establishing land-management institutions where return starts to happen and, where possible, ensuring a dedicated service where DPs can come for support – It will take time to develop a comprehensive policy to deal with the issues arising from the country assessment. However, in the interim, some spontaneous returns already may start to happen. Given the challenges that DPs are likely to face in accessing their homes, land and businesses, and given the potential for disputes between returning DPs and secondary occupants, the relevant land-administration institutions would have to start functioning where, as well and as soon as possible. Where necessary, the government and its supporting practitioners also should consider the establishment of return-assistance centres.

Such a model is the process to address the 2006–07 displacement in Baghdad and Diyala, where IDP centres provided practical assistance to DPs facing difficulties in accessing their homes, land and businesses.[323] These Principles are intended to guide coherence of such a policy, aligning both formulation and implementation with the State's corresponding human rights obligations to ensure stability and sustainability of solutions.

Conducting an assessment of the currently available housing stock, with a focus on the affected area – As soon as security conditions allow, a sustained data collection effort would be needed to assess remaining housing capacities in displacement-affected areas. Sound statistics regarding housing stock then can inform a housing scheme that closely reflects the conditions on the ground and could feed into the establishment of a Housing Fund. Aware of the size of the problem, in 2012, the Iraqi government committed the Housing Ministry to spend $4 billion to build new housing units across the country.[324] Such examples may be an indicator of how the State's applied the overarching human rights-implementation principle of the maximum of available resources to achieve HLP-rights restitution.

Quantification of values at stake in advance of displacement: With a view to victims' rights to reparations in the face of impending gross violations of HLP rights, the pre-emptive quantification of values subject to loss in the case of conflict or other cause of displacement is usually the most verifiable, thorough and credible. In certain cases, this has been possible,[325] although no know examples can be cited in which a pre-emptive quantification of values at stake has taken place. Certain groups may be particularly vulnerable, as in the case of women, social minorities or indigenous peoples whose HLP rights might not be formally recognized or registered prior to the displacement or dispossession.[326]

Creating new mechanisms – The return-and-restitution process may require the creation of new mechanisms, both judicial and quasi-judicial in nature, to find ways of resolving such disputes. This has become commonplace in refugee and IDP return scenarios, as the experiences in Afghanistan, Bosnia-Herzegovina, Kosovo, Tajikistan, Iraq and elsewhere attest. Such mechanisms may be purely local, as is the case for example in Iraq, or international, as for example in East Timor and Bosnia/Herzegovina, or a mixture of both. What is most suited in any given case will depend on the particular national and international context determine in the country assessment.

Such new bodies also could face drawbacks to keep in ind. In Afghanistan, for instance, a Special Court was established to deal with property disputes concerning refugees. However, it was widely seen as ineffective and faced closure, with its case-load handed over to the ordinary courts. In Bosnia-Herzegovina, decisions issued by the Commission on Real Property Claims (CRPC) were not immediately enforceable by local authorities, and it took five years to introduce a law on implementing CRPC decisions. In addition, CRPC decisions were limited to determination of property ownership, without reference to renters' or secondary occupants' rights. The persons holding CRPC decisions had undergo local administrative processes to have their decision implemented, which made them dependant on the functioning of the local housing office.

Over 150,000 property-restitution claims had been filed with the CRPC by those displaced prior to March 2003. Claims to recover property from the current occupants or the Iraqi state have been an especially burning issue around Kirkuk, where a significant number of the more than 50,000 filed claims remain for long unresolved. The high number of cases reflects the fact that forced displacement under the former regime often accompanied the ruling party's expropriation of homes, land, and businesses. Those properties then often would be sold to third parties, complicating restitution claims.

In Libya, an estimated 75,000 properties were confiscated under the Qadhdhafi government's Law No. 4 and potentially subject to restitution claims. By 2011, 25,000 claims were filed with the Compensation Committee, formed in 2006. However, these have not been adjudicated as of 2019. Nor have potential claims for HLP violations since 2011 been surveyed or subject to systematic adjudication.[327]

Localised Property Dispute Resolution Mechanisms – Dispute resolution dynamics may change through the HLP-restitution process. One way to make the process more effective over time is to decentralise rights and responsibilities through local institutions, including local government and local authorities. The Principles can help guide those duty bearers in the task of processing claims and enforcing decisions.

In Iraq, the dispute-resolution dynamic changed significantly after 2014, as the government's weakened institutional capacity led to the emergence of new local dispute-resolution bodies, whether political, religious or otherwise informal. Before the 2014 crisis, a majority (58%) of respondents to an IOM assessment survey indicated that official central government bodies were mainly facilitating property dispute resolution across three assessed governorates. A notable exception was Diyala, where religious bodies were commonly used alternatives to official processes even before 2014.

In a few cases, notably in Salah al-Din, informal (tribal) dispute-resolution mechanisms and forums complemented dispute resolution.[328] The Principles could help such informal dispute-resolutions be more effective by ensuring the adherence to HLP-restitution objectives within the time-tested normative framework. Otherwise, over time, the dispute resolution mechanisms may deliver outcomes that lead to discontent and the potential for renewed conflicts and displacement.[329]

During peace negotiations – Principle 12.6 underscores the importance of integrating restitution rights and mechanisms directly into peace agreements, in order to expedite the creation of restitution institutions. Lessons should be taken from the experiences of other regions. For example, negotiation-outcome documents outlining the authority and competencies of the various operations functioning in the Balkans, East Timor and elsewhere did not include HLP concerns as prominently as they should have.

At the time of the Dayton Agreement (1995), with its Annex 7 clearly enshrining the refugees' and DPs' right of return to their original homes, most international community interventions were not yet envisaged. Security, stability, legal, economic, social and other problems invariably emerged, as in all post-conflict settings when HLP-rights are not sufficiently addressed. Some peace operations eventually learned that lesson and began to assume more HLP-restitution challenges. Were these competencies written directly into the agreements establishing peace operations, attempts at creating a stable peace and assisting with reconstruction arguably would have had been earlier and more successful.

Resolving ongoing HLP disputes – In situations of mass return, as refugees and DPs begin to reclaim their original homes, secondary occupants may need to find alternative accommodation. In such situations, and as opportunists attempt to take advantage of the breakdown in law and order, HLP-restitution disputes are commonplace. Such disputes can take numerous forms and escalate quickly. These may include attempts by DPs and refugees physically to reclaim their former homes, which members of other ethnic groups now occupy.

HLP claims by persons without documentary proof of their tenure relationship, but who do hold legitimate rights, may face officious or social resistance. In certain instances, current secondary occupants may hold "lawful titles," based on more-recent formal or informal transaction, where the legitimate right-holding returnees do not. Disputes may arise based on secondary occupants' claiming interests derived from improvements that they have made to homes, lands and property.

Claims of tenancy rights and cultivation rights may be based on custom (*`urf*), but disputed by more-recent formal tenure holders. Restitution processes taking these Principles into consideration can provide a means for developing fair, rights-based mechanisms to address such disputes consistently and equitably.

Larger-scale and deeper-seated HLP disputes may need resolution in the post-crisis HLP-restitution process. Such long-standing disputes may re-emerge and manifest without warning. As noted in the **Introduction**, the region's current crisis is invariably layered atop generations of tenure history.[330]

New disputes may erupt in the context of return. Iraq witnessed an increase in property disputes following return to areas retaken from ISIL. In particular, 32% of respondents from Diyala Governorate reported such an increase, citing a lack of established and trusted institutional channels to settle property disputes as the main cause. The campaigns to end ISIL's occupation caused a new wave of property disputes, including those between HLP claimants and secondary occupants, and over previous demarcation lines between properties. Disputes between individuals increased also after ISIL used lands, especially agricultural lands, for trenches and other military purposes, destroying former agricultural land borders.[331]

Judicial sector reform – In several cases of widespread displacement, dispossession and destruction in the MENA region, a common—although not necessarily recent—phenomenon has been the loss of faith in the judiciary and/or other State institutions. The rehabilitation of judges and the judiciary must be long and long sighted, but the urgency of HLP restitution might not withstand the lengthy process required.

The obligation that arises from ICCPR applies also in transition-justice processes, whereby remedial efforts may call for special adjudication mechanisms and chambers to determine HLP restitution rights and liabilities. To guard against bias and to restore faith in the justice system, such special mechanisms could involve mixed panels with judges from other countries with HLP-restitution experience serving *pro tem*.

Common Questions

Who should conduct the preliminary assessment?

Ideally, the relevant institutions of the State would be the most appropriate party to carry out the rapid, preliminary and longer-term assessments of the situation and identify needs within its jurisdiction and territory of effective control. However, the needed expertise is often not available within government institutions, as these specialised functions are not within the normal operation of national public institutions. Especially in States emerging from disaster, conflict, fragility, occupation or other seismic transition, several international multilateral agencies and NGOs regularly provide this service within their capacity and resources, usually in cooperation with the relevant government institutions.

Assessments undertaken by such organisations usually are based on FDGs with selected refugees and DPs. In IOM's *Hijra Amina* Programme assessment in Iraq, as of September 2016, findings were strong enough to indicate that a new displacement crisis had generated multiple HLP issues, but a broader survey was needed to confirm the scope of the HLP issues and provide more granularities about what special challenges groups of DPs from particular locations face. That survey, was to be carried out by Iraq Government with international community support, to ensure that the results would aid policymakers to start thinking about how to resolve the ongoing displacement, where and when the security situation improved.[332]

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

In operationalising the Pinheiro Principles, States should establish guidelines that ensure the effectiveness of all relevant HLP restitution procedures, institutions and mechanisms. In order to develop these comprehensive guidelines, several issues will need to be clarified, including:

- The jurisdiction of the restitution body;

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

Decisions should address the actual situation, while adhering to the Pinheiro Principles.

What is the role of local courts in restitution processes?

Ideally, the conferral of housing and property restitution rights and their enforcement should be a function of local decision-making bodies and courts in countries of origin. However, even where local courts are fair, impartial, competent and adequately resourced to deal with potentially large numbers of restitution-claims practice has combined judicial mechanisms with administrative processes, community mediation, reliance on customary law and, when appropriate, provision of legal aid. Such combination approaches may yield the most-successful restitution outcomes. One should bear in mind that local courts will be the party enforcing any restitution-claims decisions issued by international bodies.[333]

That said, a lack of competence or public trust in the judiciary may make it necessary to rely on non-judicial processes, or to re-train or rehabilitate judges for them to function properly in adjudicating HLP-rights and restitution claims. A vetting procedure—determining competence and ethics—may be a prerequisite to local courts assuming their role in HLP restitution.

Do mass claims affect due process?

Legal practitioners, in general, find individual claims deliver the highest degree of justice. Mass claims, they say, can deliver only a kind of "rough justice." Iraqi lawyers working with the PCC, for example, have perceived mass-claims processing techniques as incompatible with due process, so the Commission has been reluctant to embrace such techniques, even though they would considerably increase the efficiency and expediency of its work.[334]

Can non-judicial remedies achieve HLP restitution?

Non-judicial remedies sometimes can be more effective and with far-reaching effect at providing restitution to larger numbers of people. They also may operate in a shorter timeframe than judiciary-based restitution procedures. A lack of capacity and case backlogs are common to judicial HLP-restitution processes.

South Africa's restitution programme, for instance, moved from a judiciary-based system to a more administrative process, once it became clear that a purely judicial approach would be overly burdensome, result in serious delays in enforcing restitution rights and ultimately not be in the best interests of the HLP rights holders. In other countries, alternative dispute resolution (ADR) mechanisms or alternative justice systems, sometimes based on customary [traditional] law. These may deliver better results.

(See also ***When conducting a gender analysis*** under **Principle 18: Legislative Measures** below.)

Useful Guidance

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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.

This Principle provides for the accessibility of restitution claims procedures, with the understanding that not only must institutions be effective in implementing their restitution policies, they also must be accessible to those constituencies that they are meant to benefit. Special emphasis on access to justice for victims is found also in Section VIII of the reparations framework[335] and Section VI of the *UN Basic Principles and Guidelines on Development-based Evictions and Displacement*.[336]

Given the sensitivity around these issues and the need to create an environment allowing the development of sustainable solutions to restitution rights within integrated sustainable development plans, such processes should be national in nature, supported by the international community, unless another solution is warranted. Ultimately, restitution claims procedures should be free of charge, simple, accessible and enforceable, and must be designed to ensure that all claims are resolved fairly and efficiently.

The Darfur Peace Agreement (2006) affirmed that "Displaced persons have the right to restitution of their property, whether they choose to return to their places of origin or not, or to be compensated adequately for the loss of their property, in accordance with international principles." It provided for the Darfur Rehabilitation and Restitution Commission, which, with the relevant authorities:

> "shall establish restitution procedures, which must be simple, accessible, transparent and enforceable. All aspects of the restitution claims process, including appeals procedures, shall be just, timely, accessible, free of charge, and age and gender sensitive. The procedures shall contain positive measures to ensure that women are able to participate on a fully equal basis in the process."[337]

Effective restitution procedures also imply a bundle of human rights, including the States respect, protection and fulfilment of the process-related human rights to information, freedom of expression, freedom of movement, freedom of association, freedom of peaceful assembly, as well as the non-derogable human rights to legal personality, and freedom of thought, religion and belief. Exercising these process rights supports the substantive rights to be enjoyed by their outcome, including adequate housing, livelihood and the continuous improvement of living conditions, protection of the family and participation in culture.

Opportunities for Applying Principle 13

Public information and awareness raising – The returnees and potential returnees must have sufficient information about the existence of the HLP-restitution mechanism. That information must be reliable, sufficient and expressed—whether in writing, orally, or by other reliable media—in a language understood by all affected persons.

A high quality and wide distribution of public information are essential so that all concerned parties should be made aware of the methods and procedures involved in submitting and adjudicating HLP-rights claims. Official channels, as well as publicity and awareness campaigns in cooperation with independent media and with CSO involvement and engagement. Those parties will provide needed scrutiny of the claims process to ensure that it operationalises—and is seen to operationalise—justice at its foundation. Public access to records and claims is key to ensure transparency and, therefore, legitimacy of the process and its outcomes.

The process will need to provide for dialog, especially between victims and secondary occupants, and/or counterclaimants to achieve consent and mutual understanding in HLP-rights restitution decisions and settlements. Both process and outcomes should be void of stigma for all parties, and the restoration of the reputation of affected populations may be needed for true restitution and rehabilitation for past discrimination.[338] The messaging around the process should put an end to any stigma suffered in advance of dispossession, or to "collective guilt" impeding restitution.

Important, too, in the protection against stigma and the rehabilitation of reputation are provisions in the process that address sexual violence that has accompanied the HLP violation or flight. This eventuality calls for accompanying psycho-social services for returnees, and specific guidance is available separately, but complementary to these Principles.[339]

The means for such messaging could involve also localize and public *diwan* or other form of consultative meetings (*mushawarat*). The use of social media could help bring stakeholders together.

The careful use of language contributes to a peaceful and sustainable outcome. As pointed out in the **Introduction**, these Principles rest on the recognition of violations of human rights related to HLP and they seek "remedy" and "redress." They do not to convey the language of "accountability," "liability" and "culpability." The prosecution of crimes and pursuit of perpetrators form subjects of other processes that may operate in parallel, but should not impede, delay or defer the restitution of refugee and DPs' HLP rights.

During 2016, many returnees other affected populations in Iraq were unaware of the PCC's work.[340] Their limited access to information meant limited access to redress and justice. This finding highlights the need for effective efforts to ensure the access to information.[341] Regular inquiry in the form of surveys and evaluations help ensure that the message is well received by the intended publics and enables any needed adjustments to the content and/or delivery.

Ensuring equal access to all potential restitution claimants – All restitution claims processes should be structured to provide permanent housing (or land or property) solutions for all returnees, including owners, tenants and others with recognised restitution rights, preferably in one's original home. Claims processing centres and offices should operate throughout areas where claimants currently reside, making it easy to reach the nearest office or, if needed, deploying mobile teams to such areas.

The target zones may include neighbouring countries where refugees currently reside, awaiting return. (See ***Out-of-country processing*** below.)

Restitution bodies must have free access to all property records and be required to accept various types of evidence. Special measures and institutions should consider collective restitution claims as well.

In addition to administrative access, the centres must be accessible physically as well. They should be sufficient in number and distribution so as not to pose undue economic or physical burden claimants to reach them. They must be accessible also for men and women equally, and should be equipped with easy-access facilities and assistance for persons with disability.

Out-of-country processing – HLP restitution following conflict can sustainable solutions and, thus, contribute to national reconciliation only if it provides a meaningful opportunity for all, including refugees, to participate. For that, out-of-country processes pose significant logistical and financial burdens and complexity to the claims process. While equal treatment between in-country and out-of-country claimants has to be ensured, separate outreach campaigns and additional assistance may be needed to out-of-country claimants who lack access to evidence, such as property registries.

At the peak of the Bosnia-Herzegovina's CRPC's work in 1999, seven of its 23 regional offices were located in Western European countries hosting large numbers of refugees. Similarly, the German Forced Labour Compensation Programme relied on IOM's network of regional offices for its public-outreach campaigns, collecting claims in over 60 countries. Similar mechanisms may be appropriate in analogous cases, operationalising the overarching principle of international cooperation through extraterritorial operations eventually established to restore HLP rights of refugees and other HLP rights holders from Algeria, Iraq, Libya, Palestine, Syria, Western Sahara, Yemen and other countries residing overseas.

Determining legal standing of current occupants and other third parties – To achieve fair and sustainable solutions, all parties concerned must have access to restitution claims procedures, including for those currently occupying or using the claimed property. The notification of current occupants and other third parties about pending claims poses an unavoidable administrative burden on programmes, also adding considerable complexity to the decision-making process. It is crucial that procedures are designed to deal with third party participation in a fair and efficient manner, and various approaches have dealt with the problems of legal standing of third parties.

Under the rules governing the claims resolution process of the Housing and Property Claims Commission in Kosovo, the current occupant had the option to file a counter-claim upon notification of a claim to the property in question. Similarly, CRRPD in Iraq had notified current occupants and other identifiable interested parties about a filed claim, inviting them to respond to the claim. If personal notification was not possible, then other public means of notification were used.

The less urban and more rural a restitution process, the more difficult it becomes. Rural notifications may be more complex and labour intensive, depending on the level of infrastructure or difficulty in determining addresses. Often customary land-tenure arrangements may impede finding those requiring notification. Practitioners should adjust their timelines and budgets accordingly.

Common Questions

What types of evidence can be put forward by those making restitution claims?

For efficiency sake, formal and official title deeds are the preferable types of evidence to present with HLP-restitution claims to freehold tenure (ownership). For other kinds of tenured property, including claims to restore leasehold (rental) housing, land or other property, rental or lease contracts provide the best evidence. That form of evidence is discussed under **Principle 15: Housing, Land and Property Records and Documentation** below. However, a variety of other evidence types may be admissible.

Documentary evidence may include, for instance: verified sale contracts, verified gift contracts, inheritance decisions with legal validity, court decisions on ownership, records of valid decisions made in administrative procedures, mortgages or credit agreements, property taxes or income taxes, construction licenses or building permits, usage permits, contracts on use of an apartment, excerpts from official records, formal decisions on the allocation of an apartment, decisions on apartment rent or rent levels, apartment rent slips, formal decisions declaring abandonment, certificates of place of residence, utility bills (water, electricity, phone, gas, etc.), pre-displacement phonebooks, eyewitness testimony, personal identity cards, car registration, census records, personal contracts, dismissal records, photographs, value reports, voting records, among others.

Given the frequent difficulties in collecting and presenting evidence for these purposes, users of the handbook may consider developing projects and capacities to assist claimants in assembling such documents. The type of admissible evidence depends on the standard of proof adopted. HLP claims programmes usually have applied lower standards and thresholds than courts to prove "credibility" or "plausibility," acknowledging the fact that most claimants had to leave documents behind upon flight, or that documents have been lost or destroyed during conflict or in the interim.

In the absence of documents, other evidence may include corroborating personal accounts by former neighbours or other community members testifying to the veracity of the claim. Photographs, films and other visual media may be admissible to help ascertain the veracity of a claim.

Traditional tenure claims could be verifiable by various forms of evidence such as historical records and oral history, likely to be locally familiar. The CFS adopted *Voluntary Guidelines on Responsible Governance of Tenure of Lands, Fisheries and Forests* (*Tenure Guidelines*) in 2012 also recognized a variety (continuum) of possible tenure arrangements, supporting "legitimate" claims to informal tenure, which could be interpreted to mean that the tenure claim is to longstanding nature for a period—usually determined in domestic law—without other parties successfully contesting.[342]

How can legal aid facilitate the claims process?

Specially designed legal aid programmes are seen increasingly as major contributors to HLP restitution. These increase the accessibility of claims procedures and ensure that persons are not deterred from benefiting from them due to barriers associated with navigating complex or intimidating legal systems. Legal aid allows returnees to recover the basis of a well-organised life, whether waiting to return or trying to integrate into the host communities.

In addition to HLP-restitution mechanisms ensuring clear and easily understandable claim forms, legal assistance can provide multiple services to claimants at the application stage. Assistance in past programmes has ranged from printed material that explains the restitution process and contains detailed instructions on how to fill out the claim forms, call centres or hotline numbers to field claimant questions and in-person interviews of each claimant by programme staff at the claim-intake stage.

The NRC's Information, Counselling and Legal Assistance (ICLA) programme has helped tens of thousands (if not more) of displaced people to obtain the restitution of their HLP rights. ICLA programmes operate in a variety of countries. In Lebanon, ICLA assisted 269,409 persons in 2017.[343]

UNHCR also offers legal assistance in cooperation with local partners, servings thousands in Iraq.[344] The same is true of Ockenden's Legal Aid and Information Centres (LAICs) in the Iraqi cities of Karbala and Kut, where legal assistance has been vital for DPs.[345]

Local NGOs can provide legal aid to returning refugees and DPs in many countries. In some case, such local services may arise from international NGO and multilateral programmes, as was the case after NRC closed down its ICLA activity in the Balkan region in January 2005. A training-of-trainers approach in the field could limit the burden on a programme and could be considered in order to have victim interest groups provide effective assistance to individual claimants, especially after the international organization leaves the country.

The global online *Rights in Exile Programme* works to achieve better protection of refugee rights by networking legal assistance providers with resources and training, and facilitating access to free legal assistance and information for refugees around the world. Among its functions are translation services and country-specific directories of locally accessible pro-bono legal services for refugees.[346]

Useful Guidance

NRC Council and Displacement Solutions. *An introductory guide to understanding and claiming housing, land and property restitution rights in Myanmar: Questions and answers* (Geneva: March 2017), at: https://reliefweb.int/report/myanmar/introductory-guide-understanding-and-claiming-housing-land-and-property-restitution;
Suliman, Osman. *The Darfur Conflict: Geography Or Institutions?* (New York: Routledge, 2011);
UNHCR. "Legal assistance in the context of internal displacement," Guidance Note 5: Legal assistance, *Handbook for the Protection of Internally Displaced Persons* (New York: UNHCR, 2007), at: http://www.unhcr.org/4794a4492.pdf.

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 programs are carried out with adequate consultation and participation with the affected persons, groups and communities.

14.2 States and other involved international and national actors should, in particular, ensure that women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including the elderly, single female heads of households, separated and unaccompanied children, and the disabled should be given particular attention.

Principle 14 recognises the importance of involving potential HLP restitution rights holders in the process as partners, and not solely as the subjects of such processes. This Principle identifies typically marginalized groups and vulnerable individuals who should be subject of special measures to include them in decision-making processes and empower them to make their participation effective and meaningful.

Participation in development has been a widely established practice since the 1990s, when the UN Development Group recognised that "Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized."[347] In development practice, exercising the right to participation can guarantee project efficiency and sustainability, mitigate public opposition, prevent marginalization and further deprivation. The right to adequate consultation

and representation in decision making has been articulated by many UN bodies, including CESCR, within the context of forced evictions, interpreting the State party's obligation to ensure that affected communities exercise their right to "an opportunity for genuine consultation."[348]

Although no single international human rights instrument elaborates the human right to participation in HLP restitution processes,[349] numerous international conventions outline the different aspects of participation as a human right, including for specific groups such as women, children, the disabled, minorities and indigenous people. Similarly, Principle 28 (2) of the *IDP Guiding Principles* states that "Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration."[350] The UN *Basic Principles an Guidelines on Development-based Evictions and Displacement* treat this process human right as an essential measure of constant obligation, both to prevent and remedy eviction and displacement.[351]

In addition to the general right to take part in the conduct of public affairs,[352] the non-derogable human rights to freedom of opinion and freedom of expression are indispensable conditions for the full development of the human person. They are essential for any society[353] and are foundational to every free and democratic society. The two freedoms are interwined, with freedom of expression providing the vehicle for the exchange and development of opinions. These freedoms are a necessary condition for the realization of the principles of transparency and accountability, which are essential for the promotion and protection of human rights in governance. For instance, free expression is integral to the enjoyment of the rights to freedom of assembly and association, and the exercise of the right to vote.[354]

Participation is based on the fundamental principles of human rights stressing individual autonomy and self-determination as elements of basic human dignity. Human dignity differs conceptually from ideas often traditionally used in aid provided as an act of *charity*, or *development as welfare* in emphasising the value of active choice as opposed to making people "passive recipients of dispensed benefits."[355] In the *capabilities approach* of free and informed choice, the greater the informed participation, the greater the dignity of all concerned.[356]

Principle 14.1 refers to "adequate consultation and participation" with the affected persons, groups and communities involved in the HLP restitution process. Combining HRBA with the capabilities approach would pursue the highest level of participation possible. That takes place when local stakeholders have control over decision making and resources, where they partner with development agencies to design, plan, implement, monitor and evaluate the process. That level of participation facilitates the longer-term process and objective of project management.

Free and prior informed consent (FPIC) has been referred to as the "gold standard" of participation.[357] FPIC is enshrined in the UNDRIP with special reference to indigenous communities. FPIC ensures that the relationship between the development agency and local community is one of partnership. Consistent with this principle, affected communities reserve the right to refuse terms of a project or programme pursued by parties external to the community.

Participation efforts must be balanced with reality. For example, when the political system in the country is being (re)built, practitioners should undertake efforts to ensure newly empowered people are not left vulnerable after the departure of the international community. Participation should be facilitated so that it institutionalises as much community-level decision-making power as possible. The community members, women and men, know their own environs and needs better than anyone else.

The planners' role in the participatory planning process is to coordinate, support communities, encourage participants to envision and articulate solutions, link community plans to wider-scale plans to ensure suitability within the overall economic, organizational and political context and acceptance within the local authority structures and related institutions.

Women often are excluded from male-dominated decision-making forums, or choose not to participate for fear of gender-based violence. Nonetheless, when supported and organised, women contribute to risk reduction, recovery policies, plans and programmes by providing specific knowledge, perspectives, experiences and solutions that men normally would not provide. Authorities, humanitarian actors and development agencies can partner with women's networks and grassroots organizations to support the position of women's participation in planning, implementation, monitoring and evaluation.[358]

The question of children's participation arises also in this context also, especially as displacement and exile profoundly affect them. As noted below in connection with civil documentation, children face great risks of statelessness and denial of vital health and education services in displacement. Their participation and best interests should be kept in focus throughout the planning and implementation phases of return and HLP restitution. The best way to ensure that focus is to engage them directly.

Several provisions in the CRC reflect children's right to participation. Participation is one of the guiding principles of the Convention, as well as one of its basic challenges. Article 12 of the CRC states that children have the right to participate in decision-making processes that may be relevant in their lives and to influence decisions taken in their regard—within the family, the school or the community. The principle affirms that children are full-fledged persons who have the human right to express their views in all matters affecting them, and requires that those views be heard and given due weight in accordance with the child's age and maturity. It recognizes the potential of children to enrich decision-making processes, to share perspectives and to participate as citizens and actors of change with the eventual role and responsibility of the communities built and rebuilt. It is often only through such participation that it becomes possible to operationalize the CRC guiding principle that "the best interests of the child shall be a primary consideration."[359]

The UN *Framework on Ending Displacement* advocates that responses "should address the rights, needs and interests of refugee returnees, DPs and other affected populations and allow them to participate in the planning and management of durable solutions." As suggested above, it is also proposed that this is best achieved through

> …comprehensive area-based programmes to include both the specific needs of displaced persons returning to their place of origin and the potential needs of the receiving communities, ensuring … links between communities and subnational governance entities to provide space for voice and accountability in planning, implementation, and monitoring of interventions to promote durable solutions.[360]

(See discussion of permanent versus pre-fab solutions in the response to the question ***Who pays for voluntary repatriation and restitution programmes?*** under **Principle 10: The Right to Voluntary Return in Safety and Dignity** above.)

Opportunities for Applying Principle 14

Collecting HLP information during refugee and DPs' registration and opinion surveys – Principle 14 is designed to ensure that those entitled to assert housing and property restitution rights are active participants in this process and that they are fully consulted *and* able to put forth their views on these

questions prior to the completion of the design of restitution laws, procedures or mechanisms. It will be important for users of this handbook to gauge perspectives on all elements of the restitution question, and to determine how groups of refugees and DPs envisage the restitution process working in practice. Meanwhile, practitioners must be careful not to raise false expectations associated with restitution, which risk undermining the process.

Those with restitution rights should be encouraged to provide concrete ideas concerning the design and implementation of the restitution process. Collecting such views can be done formally through meetings and other exercises, as well as during registration and opinion surveys carried out in settlements and other areas where the displaced are concentrated. It may not be possible, however, to implement each group's views of the restitution process. Consequently, each participant presenting a view should be provided with feedback as to the constraints that may impede the implementation of those views.

Monitoring gender-sensitivity in restitution processes – Assurances should be in place to ensure that women refugees and DPs that decide to exercise their restitution rights make such decisions in a truly voluntary manner and not otherwise coerced into making such choices. Women's views on restitution may place emphasis on different aspects of the process than those prioritised by men, and every effort should be made to determine what these views are and how they can best be facilitated and considered throughout the entire restitution process.

Gender aspects have been highly complicated in Afghan HLP restitution. One consequence of the protracted conflict there, as elsewhere, is a large number of poor female-headed households. Even in the best of times, women have faced major constraints in accessing employment and resources and often have been excluded from peace initiatives, politics and decision making in HLP matters, including reconstruction and settlement planning. In the return of refugees and DPs since 2002, women have faced problems in building sustainable livelihoods and gaining access to land, shelter and needed infrastructure, and many returned communities have been under constant threat of eviction.

In response, UN-Habitat has established Community Forums in Afghanistan to enable both women and men to participate in community-level planning. UN-Habitat helped the Transitional Islamic Government in designing the National Solidarity Programme, which supported community-led reconstruction projects to include women and take their needs into account. The programme has helped transform gender roles in more than 4,700 rural communities during 2003–2004 and has given an important space in the development of 400 women-led Community Development Councils for women to express their priorities and needs. These Councils have empowered community members to participate in community-development projects, improving women's access to shelter and basic services through UN-Habitat-provided technical support and training for community planning, and strengthening district-level governance with practitioners in project planning and management.[361]

In Afghanistan, a UN-HABITAT-led programme has visibly improved informal settlements in Kandahar, Mazar-e-Sharif and Jalalabad municipalities. It also has given women greater opportunities to participate in community development activities traditionally dominated by men. The women's Councils implemented training in income-generating skills, as well as projects to improve urban infrastructure such as improved water, drainage and electricity services, and increased security through wider roads.[362]

Using digital technology to enhance participation – Access to information is critical to individuals and communities to effectively have a say in the decisions that affect their life. Research and practice have demonstrated that digital technology provides new avenues for citizens, including youth and women, to

become informed, shape opinions, and get organized, countering challenges often faced by these groups in accessing public space and decision making.

In the reconstruction of Gaza, Belgium supported UN-Habitat and UN Women to advance women's and youth's rights to participate in reconstruction and recovery efforts through digital tools and techniques. In cooperation with the Palestinian Housing Council, AISHA Association for Women and Child Protection, and Gateway for Outsourcing Information Technology, the *Utilizing Digital Tools to Promote Human Rights and Create Inclusive Public Spaces in the Gaza Strip* project involved the design and implementation of three inclusive, safe and accessible public spaces using digital technologies, tools and video games such as MineCraft and SaftiPin to engage communities in designing their own public spaces. Simultaneously, female architects from Gaza were trained on the use of digital technologies for the development of gender inclusive, safe and accessible public spaces free from violence against women.

The joint project has sought also to strengthen the relationship between local authorities and communities, increase civic engagement of all citizens and promote good governance, while supporting long-term institution building and the overarching principle of self-determination. It paralleled local councils' and professionals' capacity to use digital technologies to better inform citizens on planning, land and development available through an interactive municipal website.

Common Questions

Does the principle of FPIC apply in the case of refugee and IDP return?

UNGA had accepted FPIC only in the case of indigenous peoples. UNDRIP recognises that, while "Indigenous peoples shall not be forcibly removed from their lands or territories[,] No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."[363]

FPIC is grounded in the principle that "a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use." A concept advanced by many civil society organizations, including the Forest Peoples Program,[364] is now a key principle in international law and jurisprudence related to indigenous peoples.

The FAO/CFS *Tenure Guidelines* enshrine this concept as well, with reference to indigenous peoples.[365] However, for other communities, the *Tenure Guidelines* provide a slightly different formulation for seeking the voluntary and consensual nature of solutions. That "consultation and participation" standard is defined as:

> "engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes."[366]

FAO has provided useful guidance on the application of the FPIC principle. As it has evolved so far, FPIC applies explicitly to indigenous peoples. However, elements of FPIC may be relevant to specific cases to ensure that returnees voluntarily consent to their return arrangements.[367]

Useful Guidance

Allen, Tim and Hubert Morsink, eds. *When Refugees Go Home* (London: James Currey, 1994).

Arnstein Sherry. "A Ladder of Citizen Participation," *Journal of the American Planning. Association*, Vol. 35, No. 4 (1969), at: http://www.participatorymethods.org/sites/participatorymethods.org/files/Arnstein%20ladder%201969.pdf;
Dietrich, Luisa and Simone E. Carter. *Gender and Conflict Analysis in ISIS Affected Communities of Iraq* (Oxford: Oxfam, May 2017), at: https://reliefweb.int/sites/reliefweb.int/files/resources/rr-gender-conflict-isis-affected-iraq-300517-en.pdf;
http://www.unhabitat.org/content.asp?cid=1267&catid=286&typeid=16&subMenuId=0;
UN. Basic Principles and Guidelines on Development-Based Eviction and Displacement, A/HRC/4/18 5 February 2007, at: http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf;
UN. Guiding Principles on Internally Displaced Persons, E/CN.4/1998/53/Add.2,11 February 1998, at: https://www.ohchr.org/EN/Issues/IDPersons/Pages/Standards.aspx;
UN-Habitat. *A Post-Conflict Land Administration and Peacebuilding Handbook* (Nairobi: UN-Habitat, 2007), at: https://unhabitat.org/books/a-post-conflict-land-administration-and-peacebuilding-handbook/;
UN-Habitat. *Women in Post-conflict human Settlement Planning* (Nairobi: UN-Habitat, 2013), at: http://www.1325.fi/tiedostot/Women_in_post-conflict_settlement_Hannula_UN_Habitat__2014.pdf.

PRINCIPLE 15: Housing, Land and Property Records and Documentation

15.1 States should establish or re-establish national multi-purpose cadastre or other appropriate systems for the registration of housing, land and property rights as an integral component of any restitution program, respecting the rights of refugees and displaced persons when doing so.

15.2 States should ensure that any judicial, quasi-judicial, administrative or customary pronouncement regarding the rightful ownership of, or rights to, housing, land and/or property is accompanied by measures to ensure registration or demarcation of that housing, land and/or property right as is necessary to ensure legal security of tenure. These determinations shall comply with international human rights, refugee and humanitarian law and related standards, including the right to non-discrimination.

15.3 States should ensure, where appropriate, that registration systems record and/or recognize the possessory rights of traditional and indigenous communities to collective lands.

15.4 States and other responsible authorities or institutions should ensure that existing registration systems are not destroyed in times of conflict or post-conflict. Measures to prevent the destruction of housing, land and property records could include protection *in situ* or, if necessary, short-term removal to a safe location or custody. If removed, the records should be returned as soon as possible after the end of hostilities. States and other responsible authorities may also consider establishing procedures for copying records (including in digital format) transferring them securely, and recognizing the authenticity of said copies.

15.5 States and other responsible authorities or institutions should provide, at the request of a claimant or his or her proxy, copies of any documentary evidence in their possession required to make and/or support a restitution claim. Such documentary evidence should be provided free of charge, or for a minimal fee.

15.6 States and other responsible authorities or institutions conducting the registration of refugees or displaced persons should endeavour to collect information relevant to facilitating the restitution process, for example by including in the registration form questions regarding the location and status of the individual refugee's or displaced person's former home, land, property or place of habitual residence. Such information should be sought whenever information is gathered from refugees and displaced persons, including at the time of flight.

15.7 States may, in situations of mass displacement where little documentary evidence exists as to ownership or possessory rights, adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution. In such cases, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.

15.8 States shall not recognize as valid any housing, land and/or property transaction, including any transfer that was made under duress, or which was otherwise coerced or forced, either directly or indirectly, or which was carried out contrary to international human rights standards.

For refugees and DPs, civil documentation of all kinds are an precious asset. The lack of civil documentation may prevent them from accessing basic services and exercising a bundle of their human rights, including freedom of movement, adequate housing, health and family, as well as HLP rights. The consequent violation of the human right to nationality can cause statelessness, a prospect most relevant to children, whose births go unregistered, especially for those born outside of their country. For UN agencies, international and local NGOs or civil institutions in this context, possession of civil documentation never should condition humanitarian assistance, access to basic services or protection.

Civil documentation is defined here as official documentation that allows an individual to prove her/his identity and civil status (nationality, birth, marriage, divorce, death) and to be recognised as a person before the law, a non-derogable human right.[368] Within the 2017 *Whole of Syria* assessment, "civil status documentation" was understood as also including identity cards.[369] Civil documentation has been deemed a key issue for more intense work, including in post-agreement planning.

This is not a purely technical or operational issue. It has legal dimensions fully enshrined in treaties ratified by most MENA States,[370] as well as in other customary and declaratory international law.[371] In its political dimension, civil documentation is integral to modern statecraft subject to the overarching principles of implementing the State's human rights obligations, namely non-discrimination, gender equality and the rule of law. Maintaining civil documentation systems is essential also to the remedial processes of peacebuilding, reconciliation and institutional reform and development. A properly functioning civil documentation system is needed to guarantee the basic rights of citizens consistent with these principles and legal criteria of the State.[372]

Civil documentation also assumes great importance as a state obligation within the dimension of international cooperation and assistance under human rights treaties and general principles of international law.[373] Violations of these principles and state obligations affect refugees and DPs outside their country. The policy of discouraging refugee documentation on the part of certain states also has compromised aid and service delivery to refugee populations. Interruptions in new refugee registration and/or high fees for the renewal of legal residence status result in DPs already in-country to become undocumented. That makes existence precarious for many denied access to humanitarian assistance.[374]

Current international practitioner engagement recognizes the importance of civil documentation and pursues the broad objectives to:

- Ensure access to civil status documentation and ensure the Syrian population (notably refugees, DPs, returnees, Syrians living in various geographical areas inside Syria) not become stateless and that everyone be recognised as a right-bearing individual before the law;
- Ensure freedom of movement for the civilian population;

- Safeguard the **protection and return of refugees and DPs** from retaliation and discriminatory measures**,** including for those living in opposition-held areas or in other countries, when accessing services or any other entitlement in the exercise of their rights;
- Facilitate and **protect access to basic social services and broad array of related human rights, including CD/HLP rights**;
- Facilitate **access to humanitarian assistance**;
- Support **economic and asset recovery** (i.e., business transactions, housing land and property issues);
- **Ensure the integrity and (re)unification of families**;
- Support **inclusive participation in elections** and prevent exclusion of rightful stakeholders;
- Support for **basic rule of law, accountability and justice**;
- Make available updated information on the location, status and composition of the population residing in the country;
- **Curb the war economy** (e.g., forgery of documentation, bribery, corruption, human trafficking);
- Mitigate disputes over property and land rights (e.g., in inheritance disputes).[375]

The Principles on HLP records and documentation are meant to facilitate restitution processes logically through the State's registration systems.

Because displacement often occurs in situations of conflict, including ethnic cleansing and dispossession, **Principle 15.8** stipulates that "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…." The UNSC used similar language in its resolution 820 (1993) on the situation in Bosnia-Herzegovina.[376]

The basic tenants of contract law stipulate that contracts entered into under duress are void. Thus, if party A's assent to a contract is induced by a threat from another party, leaving party A no reasonable alternative, the contract and its outcome are voidable by the victim.[377]

Even in the best of circumstances, tenure claims may be difficult to prove without documentation. However, that does not mean that the tenure claim is automatically invalid or illegitimate. The *Tenure Guidelines* (2012) support "legitimate" claims to informal tenure; however, the criteria for a "legitimate" claim remains open to interpretation.[378] In polling civil society land rights defenders in MENA, respondents emphasised longevity of presence, including ancestral presence, topped the list of legitimating criteria. Given less attention, but nonetheless implied, was consent or non-contestation by other parties to the claimant's HLP tenure assertion.[379] *Prima facie*, in the absence of title or other tenure documents, longevity of belonging to the claimed HLP and the non-contestation or consent of others form two strong criteria for legitimizing a HLP claim when civil documentation is wanting.

For efficiency of claims, formal and official title deeds are the preferable types of documentary evidence to present with HLP-restitution claims for restitution of freehold tenure (owned) property. For restitution of other kinds of tenured property, including claims to restore leasehold (rental) housing, land or other property tenure, rental or lease contracts provide the best evidence. However, a variety of evidence types, in addition to formal property records, may be admissible in restitution procedures.

See answer to **What types of evidence can be put forward by those making restitution claims?** Under **Principle 13: Accessibility of Restitution Claims Procedures** above.

States should ensure, where appropriate, that registration systems record and/or recognize the possessory rights of traditional and indigenous communities to collective HLP, legally protecting tenure rights, including real and intellectual property, as well as tangible and intangible cultural heritage and natural assets and endowment.

In situations of mass displacement, where little documentary evidence remains to prove possessory rights, States should adopt the conclusive presumption that persons fleeing their homes during violence or disaster have done so for reasons related to that situation. Therefore, they cannot be presumed to be ineligible for return and HLP restitution. In such cases, authorities may establish the facts of documented restitution claims independently and/or through alternate methods mentioned above.

The relevant authorities should keep in mind the legal conditions for a lawful eviction (discussed in answer to ***How are the terms "arbitrary" and "unlawful" best understood?***, under **Principle 1** above). Where these conditions are not met in the fact of displacement, DPs and their households are victims of a gross violation of human rights, in particular, the human right to adequate housing. That condition entitles the victims to all the elements of reparation guaranteed by the State.

Principle 15.1 encourages States to develop "multipurpose" cadastral or other land-administration systems for officially registering such rights, following pronouncements conferring HLP restitution rights to refugees and DPs. **Principle 15.2** links pronouncements of rights to the subsequent registration of those rights for purposes of ensuring tenure security. In instances where displacement is widespread, States should encourage judicial or administrative bodies pronouncing on tenure rights to coordinate with the institution(s)responsible for the registration of such rights, thus, ensuring that efficient information exchanges are possible. **Principle 15.3** notes the importance of developing appropriate registration systems to register rights over lands that are often not contained in official cadastres, such as the land of indigenous peoples and rights of possession of collectively held lands.

When land has significant symbolic or emotional value to its present or former owners or occupiers, communities may pressure parties in a land dispute not to relinquish their claims so as not to weaken the community's collective hold on the HLP.[380] For example, in the Ninawa and Kirkuk provinces in Iraq, minority communities pressured former owners not to give up their claims even if the parties would opt for compensation instead. A similar situation has been playing out in Cyprus, where Greek Cypriots who lost property through the partition are being discouraged from accepting compensation for their loss, rather than restitution.[381] For indigenous communities the relationship with ancestral land is often deeply interwoven with the community's identity, worldview and group preservation.

In cases where formal documentation is wanting, the Global Land Tool Network (GLTN) has developed the *Social Tenure Domain Model*, which is a pro-poor, gender responsive and participatory land information system to bridge the gap between formally registered land and land that is not registered. This open-source software tool supports the recording of informal property documentations (when official certificates are non-existent), photographic evidence, and the geo-coded mapping of HLP claims.

Principle 15.7 builds a necessary degree of flexibility into questions surrounding the registration of HLP rights by recognising that, due to the circumstances of flight, refugees and DPs frequently do not possess documentary evidence of their rights to their original homes and, consequently, that this does not limit their rights to restitution. Because displacement often occurs in situations of conflict, Principle 15.8 is designed to make invalid any transfer of rights carried out under duress.

In applying Principle 15, users of the handbook need to be aware of the many different views on the question of registering HLP rights, and why great care must be exercised in pursuing these questions. For instance, the process of constructing or reconstructing official records can be abused by corrupt officials and can be used as a motivation to economically or politically strong groups illicitly to grab HLP belonging to refugees and DPs and registering it as their own. In such cases, users of the Handbook should support efforts to improve HLP-registration systems as a preventative measure against violations such as illegal takings, and establish or re-establish cadastral and HLP registration systems as a means of first and foremost protecting the rights of economically weaker segments of society.

Opportunities for Applying Principle 15

At the time of flight - The loss and/or destruction of housing and property records and documentation in countries where public records of housing and property rights were routinely registered in pre-conflict settings is a problem that significantly complicates restitution processes, because it removes a key, independent source of verification of claims. In response, peace operations in Bosnia-Herzegovina, Kosovo, East Timor and elsewhere have developed programmes to restore and consolidate housing and property registration systems as a crucial link in the restitution chain.

To help reduce the impact of such losses, and to build documentary evidence for use in the event of return and restitution, users of the handbook and their agencies can attempt to collect whatever information and evidence of HLP rights of refugees and DPs may be available, either at the time of flight, or as near to the time of flight as possible. In emergency situations, integrating HLP-restitution protections into registration procedures for the provision of humanitarian aid to the displaced can be feasible as a means to amplify the data-collection component of these registration processes, to record information regarding the HLP situation of refugees and DPs at the time of flight, including, *inter alia,* to address length of residency, estimated value, tenure status, ownership records and any other relevant personal information related to residency, ownership, possession or use and loss of property rights. Asking the right questions and storing this information during refugee and DP registration procedures can make a big difference when voluntary repatriation takes place, as this information, in turn, can be provided to restitution institutions following the end of the cause of displacement.

Taking advantage of social media and other digital technologies – The current approach for handling massive numbers of HLP claims in post-conflict situations can be upgraded to apply a set of advanced techniques. These applications can respond to the time, size and complexity of the problem, including meeting evidentiary standards. New spatial technologies and refugees' and displaced populations' access to mobile digital technologies incite further innovation.[382]

In assessing protection needs of refugees and/or DPs – During July–August 2017, organizations implementing protection services carried out three separate assessments of protection needs. Each assessment applied a common set of indicators and tools, including community direct observation methods, key informant interviews in a sector/cluster-led *Syria Hub Protection Needs Assessments*, and focus-group discussions in the Jordan and Turkey hubs. A quantitative multi-sectoral needs assessment was led by OCHA through key informants.

The 13 protection issues surveyed included child labour preventing school attendance, child recruitment, domestic violence, early marriage, economic exploitation, explosive hazards, family separation, harassment, HLP issues, kidnapping, lack/loss of civil documentation, sexual harassment and sexual violence. In the 4,185 communities covered, all issues were reported in high occurrence. The lowest occurrence was kidnapping, affecting 24% of Syrians, with child labour preventing school attendance

showing more than 80%. However, of all protection issues, the highest occurrence was lack/loss of civil documentation, affecting 83% of assessed communities.[383]

Prior to the submission of restitution claims – Users of the handbook can assist those making restitution claims to access whatever official information concerning their claim may be available within existing property cadastres or other residential registration systems. If official documentation is not available (either because the rights in question were never formally registered or because the records concerned have been destroyed or gone missing) restitution claimants can be assisted with collecting documentation and building strong restitution claims. For instance, determining who are the legitimate owners of land and property in Afghanistan is made more difficult due to the lack of a complete set of official cadastral records and a multiplicity of ownership documents, both customary and official, and is further complicated by Afghanistan's plural legal system, in which State, religious and customary law often overlap.

After issuing decisions on restitution claims – A key outcome of any fair and equitable restitution process where the housing and property rights of refugees and DPs are confirmed, will involve the recognition of these rights through official, but *appropriate,* forms of registration and the provision of formal titles or other records assuring adequate levels of security of tenure, notwithstanding the type of HLP rights concerned. Users of the handbook will need to monitor the precise way such rights are formalised to ensure that such registration does not spawn protracted disputes over the HLP concerned.

Following successful restitution claims, practitioners should take care that registration systems providing legal recognition to customary or informal rights do not necessarily attempt to assimilate these rights into formal State law without considering all the positive and negative implications. Above all, users of the handbook should be fully cognizant of the fact that the registration of HLP rights is but one element of a much broader restitution process. (Full reparation is yet a further objective.) Formal tenure registration is neither a panacea for the myriad of complex challenges facing refugees and DPs with restitution claims, nor necessarily a value-free or non-ideological process benefitting all groups equally.

Upon the de-escalation of conflict – In the case of a reduction in violence, practitioners may seize the opportunity to consolidate efforts to plan a post-agreement strategy that seeks to coordinate methods and ultimately restore civil documentation systems, including for HLP-related documents. Practical needs may require a phased approach through two mechanisms: (1) one group of experts, or follow-up committee in a first phase to guide urgent mapping, advocacy and coordination efforts; and (2) a "clearing house" operation in a subsequent phase that would address the challenge of regularising documentation already issued by various parties to the conflict toward an eventual unitary system. The scope of work for the two bodies would cover CD issues affecting nationals both inside and outside of the country.

Common Questions

What guidance exists for traditional and non-formal types of tenure systems?

Restitution faces several practical and conceptual challenges in MENA countries, each of which involves a mix of formal and informal land tenure systems and legal pluralism, where different sources of authority (traditional, faith-based and statutory) coexist.

In many countries affected by displacement in MENA, rural lands are held and transferred mainly according to traditional or customary rules, which are not necessarily recognized and endorsed by the formal legal system, and they may not be found in documents held in the official registry. Restitution

attempts in such contexts are particularly difficult in the absence of cadastral records or documents proving ownership or possessory rights.

In Africa, the Great Lakes Protocol on Property Rights of Returning Persons elaborates on the Pinheiro Principles by suggesting the use of traditional dispute resolution mechanisms and alternative forms of evidence. These can include geographical boundary markers, community mapping, and the use of witnesses to determine rights to restitution.[384]

Can possession of HLP-tenure documentation ever be a disadvantage?
In the case of conflict in which multiple armed forced vie for territory and/or compete for legitimacy, each may set up its own documentation regime with its own stamp of approval. This is true for a variety of vital events, including birth, death, marriage and divorce. Any of these civil documents could have consequences for HLP-restitution claims at the end of hostilities. However, during hostilities and in cases where the prevailing power seeks revenge and reprisals, the refugee or displaced person possessing such alternate documentation may face confiscation of the document, or worse consequences.

This has been the case in Syria, with Damascus government, ISIL, Jabhat al-Nusra, the Kurdish regional authority and others issuing civil documentation. The competing forces have reportedly confiscated and/or destroyed tens of thousands of civil documents of refugees and displaced person, plunging them in further vulnerability and danger. The disposition of HLP records may not be completely clear for a long period after any peace agreement among warring parties is achieved.

Nonetheless, the long-term solution, consistent with the premise of the human rights approach, is to preserve the State, with a State-like, human rights bound administration. Reportedly, the preference of refugees and DPs in war-torn Syria is also eventually to harmonise with the official Syrian HLP registry and civil documentation system, although victims may have faces the dilemma of living without vital documents or accepting civil papers from an armed faction in the meantime.[385]

Can the provision of "interim rights" to housing or property be a useful tool in providing temporary protection and a degree of security of tenure?
Yes, but this needs to be done with great care. The granting of interim (or "qualified") rights temporarily vests the current secondary occupants with legal tenure, as long as no restitution claims are filed over the property within a set time-period. Such legal determinations can be useful in providing a degree of tenure security amid large-scale housing insecurity. Such protection measures can be a means of buying time until a formal restitution process could begin its work in assessing. Interim rights also can provide an impetus on the authorities concerned to identify and allocate appropriate alternative housing or property to those whose interim titles lapse, or who are otherwise found to have no formal rights over their current place of residence.

Are there dangers in registering formerly unregistered lands?
Yes, and these can be considerable. Attempts to register currently unregistered lands can cause serious problems if the adjudication process is not well designed or overly rushed. In many agrarian societies, the most difficult restitution disputes often revolve around common property resources that never have been subject to formal registration, but which are clearly used in accordance with customary or traditional arrangements.

Common property and collective tenure can be nullified if a mix of individual rights and small or larger social units, end up dividing and restricting access to grazing or forest land, rangelands, pasture, land

reserves for *musha`a*, or lineage estate property that is held by descent groups or tribes. Innovative legal constructs are often necessary to allow the registration of collective ownership and to define overlapping rights in commons such as distinguishing group or individual ownership rights, as opposed to rights of long-term or periodic access to such land.

The more vulnerable, in particular, indigenous people and women, notably suffer from registration of titles in countries without a long equality- or equity-based rule of law tradition. Communities should be discouraged from registering individual title until the common property of the community has been demarcated in a mutually agreeable fashion. At the same time, while great care is needed in any land registration process, without an effective land administration system, including a centralised registry appropriate for local conditions and widely supported by the population concerned, any titling process will not succeed. If the information in the registries is not properly managed or updated by those who acquire rights, whether by market transactions, inheritance or through other means, individual and collective claims erode.

Useful Guidance

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NRC and International Human Rights Clinic (IHRC). *Registering rights: Syrian refugees and the documentation of births, marriages, and deaths in Jordan* (NRC and IHRC, October 2015), at: http://hrp.law.harvard.edu/wp-content/uploads/2015/11/Registering-rights-report-NRC-IHRC-October20151.pdf.

PRINCIPLE 16: The Rights of Tenants and other Non-Owners

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

This Principle invokes foregoing discussion of State obligations to "take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection," including those with HLP rights claims to informal, rental, communal or marital property.

Protecting the rights of tenants and other non-owners is often overlooked in restitution programmes, despite its vital importance, especially where only a minority of the affected displaced population held

formal ownership rights at the time of flight. Under all legal systems, tenants and other non-owners possess varying degrees of HLP rights, tenancy rights, condominium rights, co-operative rights, rights of adverse possession (including with security of tenure), customary rights and other forms.

The territorial State bears the obligation to protect them from dispossession, forced eviction and displacement, and to assure them a degree of tenure security over their places of habitual residence. As with other legal issues preventing HLP restitution, failing to rectify unjust and arbitrary law applications in countries of return, particularly when used against tenants and non-owners, can act as a contributing factor in preventing successful restitution and even sowing the seeds of future instability and conflict.

Opportunities for Applying Principle 16

During the initial stages of the restitution process – During discussions leading to the development of restitution plans and processes, actors in the field should seek to ensure that the emerging restitution laws, procedures and institutions do not discriminate intentionally or otherwise against non-owners in favour of owners. As noted in **Principle 16**, three distinct groups (tenants, social-occupancy rights holders and other legitimate occupants) should be ensured explicit HLP-restitution rights.

Providing protection for groups living in vulnerable situations – Any UN or other agency entrusted with assisting groups of persons living in particularly vulnerable situations should consider including landless families as a distinct group in need of protection. That would lead to concrete plans to provide them affordable land and/or housing upon return.

Common Questions

Have restitution programmes been obstructed because of bias in favour of owners and against tenants?

In the Republic of Georgia, a legacy of discriminatory judicial application of the 1983 *Housing Code* against Ossetians fleeing their homes during 1990–92 has prevented large-scale return for several years. Courts routinely argued that a DP's abandonment of an apartment did not constitute a 'valid reason' for departure. Thus, many flats belonging to Ossetians subsequently were allocated to ethnic Georgians. Similarly, in Kosovo, because of biased application of the *Real-estate Law*,[386] housing and occupancy rights of ethnic Albanians were arbitrarily annulled, severely restricting housing and property transactions. When housing was bought or sold during 1989–99, it was generally irregular, and never officially registered, thus complicating an already-difficult restitution process. Similar processes played out in Croatia, annulling over 30,000 occupancy rights overwhelmingly affecting Croatian Serbs.[387]

Have any past restitution programmes afforded equal treatment to non-owners?

Yes. In many cases, only the minority of the affected displaced population will have owned their housing. Tenants and other non-owners do have rights of possession, including security of tenure, that protect them from forced eviction and displacement. As pointed out elsewhere in this handbook, the gross violation of forced eviction entitles the victims to reparations as defined in international law.

That means that a tenant has the right to alternative housing similar to the habitual residence and form of tenure (leasehold). If an apartment building is destroyed, the tenants retain their human right to adequate housing, and a rehousing scheme should return the residents to conditions comparable to the housing the lost in the event of destruction.

The Iraqi PCC as well as the South African Program for Restitution of Land Rights are examples of restitution programmes that address the rights in real property other than ownership. The Iraqi Commission's mandate covers certain rights of possession and rights of use as known in the Iraqi Civil Law. The South Africa programme included the restitution of worker tenant and sharecropper rights, including customary law interests such as the right to extract water and minerals from the land, to plough, to graze, to gather wood and soil, as well as rights arising out of beneficial occupation.

Traditionally in the MENA region, the law has permitted tenants to bequeath their tenant rights under current rental contracts to spouses or other eligible heirs, including maintaining the rental home for purposes of child custody for a set number of years. However, the trend in landlord/tenant law reform in many MENA countries over the past decade has ended rights to inherit leasehold tenure. Moreover, in the exceptional case of a widow maintaining leasehold under a contract in her deceased husband's name, the legal trend is to extinguish that tenant's right upon remarriage.

In many cases, only the minority of the affected displaced population will have owned their housing. Tenants and other non-owners do have rights of possession, including security of tenure, that protect them from forced eviction and displacement. As pointed out elsewhere in this handbook, the gross violation of forced eviction entitles the victims to reparations as defined in international law.

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Do squatters have restitution rights?

In principle, yes, but this depends on the circumstances of their forced displacement and the rights squatters may have accrued under the legal provisions of adverse possession in the country of origin. In most legal systems, squatters also acquire rights of possession over time, if their claims have not been challenged effectively during the period of time prescribed for adverse possession under law. If persons or communities were forcibly evicted or otherwise displaced unlawfuly and/or arbitrarily, their tenure status should be subject to human rights protections that transfer to the HLP restitution process.

What about homeless and landless people?

Restitution programmes have not often adequately benefited refugees and DPs who were landless or homeless at the time of displacement. However, provides a basis for ensuring that these most-vulnerable of groups also are able to access durable solutions upon return. Although **Principle 16** does not explicitly address persons and communities who were homeless or landless at the time of displacement, HRBA and, in particular, HRAH discussed under **Principle 8** already considers them to have undergone violation of a bundle of human rights.

Useful Guidance

Ballard, Megan J. "Post-Conflict Property Restitution: Flawed Legal and Theoretical Foundations," *Berkeley Journal of International Law*, Vol. 28, No. 462 (2010), at: http://scholarship.law.berkeley.edu/bjil/vol28/iss2/4;
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Royston, Lauren. "Inequality and Economic Marginalisation: How tenure security can increase access to economic opportunities to poor people," *Urban LandMark* (January 2009), at: http://www.tips.org.za/files/u65/tenure_security_-_lauren_royston.pdf;
Tibe, Manal. *al-Huquq al-Nubia / الحقوق النوبية* [Arabic] (Cairo: Egyptian Center for Housing Rights, 2009);
Williams, Rhodri C. The Contemporary Right to Property Restitution in the Context of Transitional Justice (New York: ICTJ, 2007), at: https://www.ictj.org/sites/default/files/ICTJ-Global-Right-Restitution-2007-English.pdf.

PRINCIPLE 17: Secondary Occupants

17.1 States should ensure that secondary occupants are protected against arbitrary or unlawful forced eviction. States shall ensure, in cases where evictions of such occupants are deemed justifiable and unavoidable for the purposes of housing, land and property restitution, that evictions are carried out in a manner which is compatible with international human rights law and standards, such that secondary occupants are afforded safeguards of due process, including, *inter alia*, an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress.

17.2 States should ensure that the safeguards of due process extended to secondary occupants do not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the housing, land and property in question in a just and timely manner.

17.3 States should, in cases where evictions of secondary occupants are justifiable and unavoidable, take positive measures to protect those who do not have the means to access any other adequate housing other than that which they are currently occupying from homelessness and other violations of their right to adequate housing. States should undertake to identify and provide alternative housing and/or land for such occupants, including on a temporary basis, as a means to facilitate the timely restitution of refugee and displaced persons housing, land and property. Lack of such alternatives, however, should not unnecessarily delay the implementation and enforcement of decisions by relevant bodies regarding housing, land and property restitution.

17.4 States may consider, in cases where housing, land and property has been sold by secondary occupants to third parties acting in good faith, establishing mechanisms to provide compensation to injured third parties. The egregiousness of the underlying displacement, however, may arguably give rise to constructive notice of the illegality of purchasing abandoned property, pre-empting the formation of *bona fide* property interests in such cases.

Addressing the phenomenon of secondary occupation has proved extremely difficult and delicate in practice. In all cases, however, secondary occupants must be protected against forced evictions and benefit from the procedural protections outlined in CESCR's GC No. 7. (See answer to ***How are the terms "arbitrary" and "unlawful" best understood?*** under **Principle 1** above.) Due process guarantees, and access to fair and impartial legal institutions must be assured for all parties.

Meanwhile, these safeguards do not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the HLP in question in a just and timely manner. However, owners' HLP-restitution rights should not expire with the passage of time.

The phenomenon of secondary occupation can vary over time and place. By 2015, IOM found secondary occupation in ISIL-held territory in Iraq to affect 89% of IDPs whose houses had been confiscated. Respondents from Salah al-Din declared that secondary occupation of private property was 64% (62.5% of key informants and 60% of returnees). Generally, secondary occupation was attributed to either armed groups (45%), or other DPs/returnees (55%). In contrast, however, secondary occupation of private property was assessed as virtually non-existent in Ninewah and Diyala (0%).[388]

A particularly complex type of competing claims involves forced or illegal sales; that is, where the DPs were forced to sell their property for a price far below the actual market value, or where the property was sold in the displaced owner's absence without his/her consent. In such cases, the titleholder of the property may have been formally changed in the property registry, making the buyer the legal owner.

The 2010 ECtHR case of *Demopoulos vs. Turkey* ruling made legal history when, for the first time, Europe's highest court recognised that the rights of original owners of property in the (unrecognised) Turkish Republic of Northern Cyprus must be balanced with the human rights of the current owners.[389] While secondary occupation may occur when the perpetrators of human rights abuses forcibly evict residents and subsequently loot property and move into the abandoned homes themselves, more often, secondary occupiers are themselves also DPs. They may have fled conflict, leaving behind their own homes and communities. In many cases, secondary occupation is enforced, encouraged, and/or facilitated by the forces that caused the initial displacement, and the secondary occupiers themselves may have had little or no choice in relocating to the housing in question. Some political commentators have noted how measures at striking *fair balance* in such HLP cases is key to a comprehensive settlement.[390]

According to IOM needs assessment reports, 28% of those who have been internally displaced in Iraq since March 2003 report that their property is currently occupied by someone else without their permission, and more than 40% do not know the status of their property. The situation for refugees may be very similar. A conservative estimate would thus indicate that the homes and land of several hundreds of thousands of displaced families are subject to occupation or use by strangers.[391]

In cases where HLP has been sold by secondary occupants to third parties acting in good faith, States should consider, establishing mechanisms to provide compensation to injured third parties. The egregiousness of the underlying displacement, however, arguably may give rise to constructive notice of the illegality of purchasing abandoned property, pre-empting the formation of *bona fide* property interests in such cases.

The unauthorised possession of refugee and displaced person HLP is common to all post-conflict situations. Some manifestations of secondary occupation clearly require reversal, particularly if the occupation in question took place during an ethnic conflict as an element of "ethnic cleansing" or where

clear cases of opportunism, discrimination, fraud or corruption are involved. Practitioners always must exercise care to protect secondary occupants against homelessness, unreasonable eviction or any other human rights violations, consistent with GC No. 7.

Prohibited under international law, however, is Israel's practice of selling off Palestine refugee properties, starting with mass transfers of refugee lands, structures and housing contents to the Jewish National Fund[392]—a parastatal organisation chartered to benefit only those of "Jewish race or descendancy.[393] Given the length of time elapsed since the 1948 and 1967 displacements, current occupants may be fourth- or fifth-party buyers occupying the confiscated property for decades, complicating restitution from the perspective of regular legal mechanisms and procedures.

This is distinct from cases where evictions of secondary occupants are justifiable and unavoidable. In such cases, however, States still must identify and provide alternative housing and/or land for such dispossessed persons to realize their HRAH, including on a temporary basis, as a means to facilitate the timely restitution of refugees' and DPs' HLP rights. In any case, holders of legitimate HLP rights should not be continually prevented from re-possessing their HLP because of the failure of the State concerned to assist current occupants to find alternative accommodation.

Opportunities for Applying Principle 17

Instituting measures to alleviate hardships facing secondary occupants – Even in cases where full restitution rights are clearly relevant for DPs and refugees, the eventual removal of secondary occupiers from these homes and lands raises several difficulties. The legal eviction of secondary occupiers to facilitate return could incite local resistance and/or deepen ethnic or other social divisions, as was the case in Bosnia-Herzegovina. In all cases, however, secondary occupants must be protected against *forced* evictions and benefit from the procedural protections outlined in CESCR's GC No. 7.

Finding interim housing and land solutions – Secondary occupation creates challenges to housing and property restitution that require a coherent policy response, based on human rights and other legal principles that clearly recognise the pre-eminence of HLP-restitution rights of legitimate rights holders. A thorough examination and analysis of existing and potential policies designed to address secondary occupation should be part of a comprehensive study with the purpose of ensuring that all parties receive fair treatment. Institutional strength and political will are needed, and restitution programmes may succeed or fail solely on the capacity of existing institutions.

Like many countries struggling to implement restitution processes, secondary occupation has proved to be a volatile issue within Rwanda. National authorities attempted to reduce the conflicts surrounding secondary occupations by entrusting abandoned land to municipalities that were, in turn, empowered to administer and manage abandoned lands. Secondary occupants were allowed to occupy those lands, so long as they submitted a written request to do so. However, the original inhabitant maintained the right to immediate restitution should they return home. If an original inhabitant returned to find her/his home occupied by a secondary occupant, the secondary occupant then had two months to vacate the premises voluntarily. If the secondary occupant was unable to find alternative accommodations within that time period, the government was entrusted with finding them another home or provide them with building materials.

Iraq's CRRPD, assumed jurisdiction over claims for properties unlawfully seized or confiscated during 17 July 1968–9 April 2003. In the interim, many third parties had paid the full market price for the properties

that later were reclaimed by the owners who were unlawfully deprived of their rights many years or decades ago.

In such cases, it may be necessary to provide compensation to such third parties, as a mere eviction would be unreasonable and, arguably, a human rights violation. In the case of Iraq, for example, the Statute establishing the CRRPD provided that such *bona fide* third parties would be compensated at the property's equivalent value at the time the claim was lodged and that the party selling the property after the unlawful confiscation or seizure should be liable to pay the compensation. In most cases, that party would have been the Iraqi state. However, in the case of off-shore buyers of Cypriot properties subject to eventual restitution to 1974 refugees, multiple courts ruled against the purchasers in 2010 without compensation.[394]

Common Questions

Should secondary occupants be guaranteed alternative accommodation?

Principle 17.3 reflects the requirement of States to take positive measures to protect secondary occupants who have no other means to access alternative housing or land. This is a perspective grounded in human rights law and constitutes a fair and sensible approach amid the often-delicate political and economic post-conflict reality. Conversely, the failure to provide alternative accommodation for secondary occupants never should be used as a rationale for restricting or denying legitimate restitution rights held by refugees and DPs wishing to exercise these rights.

Users of the handbook should note that government officials in several countries have used the requirement of alternative accommodation as a tool to delay restitution, alleging that such accommodation was unavailable and that they were unwilling to make secondary occupants homeless. To limit this practice, practitioners may take measures such as checking the availability of other housing belonging to the occupant (double occupant), or linking the provision of alternative accommodation to the income of the occupant.

Useful Guidance

Garlick, M. and Cox, M., "'Musical Chairs: Property Repossession and Return Strategies in Bosnia-Herzegovina," in Leckie, Scott, ed. *Returning Home: Housing and Property Restitution Rights of Refugees and Internally Displaced Persons*, Vol. 1, (New York: Transnational Publishers, 2003);

Jahn, Ina Rehema, in collaboration with Peter van der Auweraert and Igor Cvetkovski, *Housing, Land and Property (HLP) Issues facing Returnees in Retaken Areas of Iraq* (Geneva: Land, Property and Reparations Division, Department of Operations and Emergencies, International Organisation for Migration (IOM), September 2016), at: https://www.iom.int/sites/default/files/our_work/DOE/LPR/Hijra-Amina-HLP-return-assessment.pdf.

PRINCIPLE 18: Legislative Measures

18.1 States should ensure the right of refugees and displaced persons to housing, land and property restitution is recognized as an essential component of the rule of law. States should ensure the right to housing, land and property restitution through all necessary legislative means, including through the adoption, amendment, reform, or repeal of relevant laws, regulations and/or practices. States should develop a legal framework for protecting the right to housing, land and property restitution which is clear, consistent and, where necessary, consolidated in a single law.

18.2 States should ensure that all relevant laws clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land and property, most notably refugees and

displaced persons. Subsidiary claimants should similarly be recognized, including resident family members at the time of displacement, spouses, domestic partners, dependents, legal heirs and others who should be entitled to claim on the same basis as primary claimants.

18.3 States should ensure that national legislation related to housing, land and property restitution is internally consistent, as well as compatible with pre-existing relevant agreements, such as peace agreements and voluntary repatriation agreements, so long as these agreements are themselves compatible with international human rights, refugee and humanitarian law and related standards.

Principle 18 reflects the recognition of the right to HLP restitution for refugees and other DPs is indispensable to implement and enforce restitution programmes and policies. Legal and legislative protections should articulate clearly and in an internally consistent manner alignment with universal human rights, refugee and humanitarian law and related standards in the unitary system of international law.

To establish an adequate legal regime for the protection of the rights articulated in these Principles, concerned States will need to pursue a range of legislative measures, including the adoption, amendment, reform, or repeal of relevant laws, regulations and/or practices.

Opportunities for Applying Principle 18

Immediately following changes of government and/or during the consolidation of peace agreements – Re-establishing the rule of law in countries devastated by war, destruction, protracted crises or other forms of devastation is a key element in successful peace-building and/or statebuilding. Providing affected people with a clear statement of their HLP restitution rights and a concrete legal remedy to the violations that they have suffered as one of the most-concrete steps to building a functioning justice system, a society built on the rule of law and the legitimacy and stability of the post-crisis State.

Countries seeking to ensure that HLP restitution rights are protected in a consistent and practical manner increasingly are incorporating explicit HLP-restitution rights directly into new legislation. In Colombia, for instance, various laws (Law 387/97) and decrees (Decrees 951/2001 and 2007/2001) specifically have outlined measures designed to protect the rights of DPs. Colombia's Land and Property Protection Project (LPPP) was designed to implement Law 387 and Decree 2007, and has benefited some 14,000 IDP families and protected over 200,000 ha of land over which DPs hold restitution rights.

During periods of legislative review, particularly with UN or related transitional administrations – Increasingly, compilations and reviews of relevant national HLP laws are one of the first activities undertaken by rule of law and HLP-restitution rights advisors working in UN peace operations. This is sometimes straight forward, but more often a daunting task. However, when completed, these provide a consolidated picture of the state of current law, which then can be compared to texts such the Principles with a view to finding any discrepancies and suggesting ways to overcome them.

When conducting a gender analysis – As noted in numerous situations, existing laws might discriminate directly or indirectly against women. (See **Country HLP-restitution Assessments** under **Opportunities for Applying Principle 12** above.)

Palestine provides an example of a civil society movement, building on the Women's Model Parliament in the 1990s, to reactivate the National Committee for the Personal Status Law in 2011–12. A coalition of organizations promoting gender-equitable legislation were concerned with six main issues, including

common wealth and inheritance. Gender analysis found that only 7 percent of women in the occupied Palestinian territory owning housing, land or other real-estate property.[395] However, the National Committee made progress when the Chief Justice of the Shari`a Court issued three administrative orders that ensured women have better access to information in inheritance cases.

That decree of 15/5/2011 defined preconditions before a women renounces her inheritance (*al-takharuj* or *al-tanazul*): (1) Detailed inventory of the movable and immovable belongings of the deceased, signed by all the heirs present in Palestine and authenticated by the municipal council; (2) a report of three experts to evaluate the belongings to be excluded from inheritance under a *takharuj* procedure; (3) Publication of the *takharuj* decision in a newspaper for at least a week, under the supervision of the sharia court; and (4) a final *takharuj* decision should not be registered until four months after the death. The new decree imposed transparency in the inventory, valuation and definition of every heir's rights, with official controls, thus breaking the secrecy that can lead to intimidation of women heirs and their forfeiture of HLP inheritance rights.

Common Questions

What can legal-development experience in the region tell us?

The region's experience in legislative solutions is uneven. Some States undergoing recovery have adopted transitional-justice processes that set priorities and framed legal reform and subsequent legislation, as in the case of Tunisia. However, Iraq has accumulated the most experience in reparations, including HLP restitution.

The displacements expected during the 2003 invasion of Iraq happened only after sectarian strife erupted (2006–07). It was in this context that the Iraqi parliament passed Law No. 20 on Compensation for Victims of Military Operations, Military Mistakes and Terrorist Actions (2009). The DPs from the later emergence of ISIL formed yet another wave.

Law 20 provides for compensation only and applies retroactively to events on or after the US-led 2003 invasion causing damage (1) to property and (2) affecting employment and study, among five categories of abuse. Damage to property was assessed on a case-by-case basis. Property eligible for compensation include vehicles, houses, agricultural lands, fixtures, stores and inventory, and companies.

To address compensation claims, the Law created a Central Committee in Baghdad, with local branches, headed by a judge representing the Higher Judicial Council and formed of representatives of eight government ministries and the Kurdistan Regional Government. This has diffused the operation, rather than establishing a strong central institution.

In 2015, the Iraqi parliament amended the law, increasing grants and expanding its scope to include both natural and legal persons, as well as injured members of the Popular Mobilization Forces and the Peshmerga. The extension of benefits to armed groups is exceptional, whereas other countries such as Peru and Colombia have made specific exclusion of armed groups as beneficiaries of restitution in their national laws.[396]

With a decade of experience, decisions in Iraq were reached over 2011–16 in 65,046 cases of property damage, providing one-time grants that now range from IQD 2.5 million to IQD 5 million (US$2,115 to US$4,230), proportionate to the degree of damage.[397] The law's bureaucratic procedures, onerous

evidentiary standards and multiple documents required from various government bureaus have been major sources of delay and cost to the claimants.

See also the question ***Do judicial bodies ever address these issues?*** under **Principle 2: The Right to Housing and Property Restitution** above.)

Chapter 11 of Libya's draft Constitution of July 2017 provides for TJ measures and commits the State to promulgate a law regulating "truth seeking, reparation, accountability, accountancy and examination of institutions." However, legislative details and decisions about the start date of cases to consider have been deferred to future legislation.[398] Libya's Transitional Justice Law 29/2013 was adopted also without fully operationalising the associated Fact-finding and Reconciliation Committee. That law focuses primarily on violent crimes against physical and natural persons, but Article 28 also defers the issue of HLP violations and restitution to subsequent legislation.

Do heirs of refugees and DPs "inherit" restitution rights?

In cases of long-term displacement where the original and legitimate holders of HLP-restitution rights have died, heirs do maintain and 'inherit' those restitution rights if they themselves have not accessed any other durable solution, and as long as they expressly indicate their continued assertion over the rights associated with the housing or property under consideration.

Useful Guidance

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PRINCIPLE 19: Prohibition of Arbitrary and Discriminatory Laws

19.1 States should neither adopt nor apply laws which prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statues of limitations.

19.2 States should take immediate steps to repeal unjust or arbitrary laws, and laws which otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.

19.3 States should ensure that all national policies related to the right to housing, land and property restitution fully guarantee the rights of women and girls to non-discrimination and to equality in both law and practice.

Concerted efforts are required to avoid bias or preferential treatment in the pursuit of HLP restitution that perpetuates discrimination, undermines social cohesion, or generates resentment of the host population, secondary occupants or other communities not subject to HLP restitution and its perceived benefits.

Principle 19 prohibits the adoption and application of arbitrary and discriminatory laws that may prejudice the HLP- restitution process. Laws of this nature, such as abandonment laws, are not universally *ipso facto* arbitrary (and can be an entirely legitimate means of preventing speculation and ensuring the rational use of limited supplies of housing stock). However, such laws applied selectively against particular ethnic, religious, linguistic or perceived political groups as a pretext to prevent them from reclaiming their former homes and lands clearly are prohibited under Principle 19.

This Principle is aligned with basic principles of human right implementation and peremptory norms, and is both remedial and preventive in character. It is remedial as a criterion for country assessments and preventive as a legal principle for law reform and legislative drafting. (See also **Principle 3: The Right to Non-discrimination** and **Principle 4: The Right to Equality between Men and Women** above.)

Opportunities for Applying Principle 19

During periods of legislative analysis and review – Failing to rectify discriminatory, arbitrary or otherwise unjust laws and/or their application in countries of return prevents successful restitution and may even contribute to future instability and conflict. Assessing the judicial sector and monitoring the legal system are common in post-conflict and TJ situations. However, the analysis and review do not have to wait for a political agreement or transition to begin.

Common Questions

Have countries repealed laws that were contrary to internationally recognised HLP-restitution rights?
As mentioned above, all sides to the conflict in Bosnia-Herzegovina enforced laws on abandoned property or applied existing abandonment provisions, seeking to legitimise the ethnic cleansing and HLP confiscation that took place during the war. One of the international community's most widely hailed contributions in Bosnia-Herzegovina was its role in ensuring the repeal of those draconian laws. In Kosovo, for example, UNMIK repealed a law that discriminated against the Albanian majority.

South Africa is continuously developing experience at redressing discriminatory apartheid-era housing and land laws and replacing these with new laws recognising certain land-restitution rights. Repeal or arbitrary and discriminatory laws pertaining to HLP would be a prerequisite to the effective implementation of restitution rights.

Aren't abandonment laws generally reasonable as a legal means of preventing speculation and ensuring that existing housing stock is utilised?
In times of peace and prosperity, laws disposing or transferring abandoned property may be wholly reasonable and legitimate. However, in times of conflict, abandonment laws are designed to address an emergency or interim measure, but often are abused and exploited to punish DPs. They also can be used to facilitate and entrench prohibited policies of ethnic cleansing, demographic manipulation or population transfer. Such laws not only impede exercise of the right to return, but often violate principles of non-discrimination and equality. They usually apply to, or are enforced against specific racial, ethnic, religious or other distinct groups. This explains many DPs' lack confidence in any realistic chance to return home in safety.

Notorious and still-consequential in the MENA region is Israel's Custodian of Absentee Property Law. That 1950 legislation defines persons who were expelled, fled, or who left the country after 29 November 1947 for any reason, as well as their movable and immovable property (mainly land, houses and bank accounts etc.), as 'absentee.' Property belonging to absentees—as well as those determined to be of 'enemy' nationalities—was placed under the control of the newly proclaimed State of Israel's Custodian for Absentee Property. The Absentee Property Law was the main legal instrument used and sometimes revived by Israel to take possession of the land belonging to the internal and external Palestinian DPs, as well as Muslim Waqf properties across Palestine.[399]

Could time limits on claims have discriminatory effect?

Yes. At the restitution stage, time-limits for claims set in law or regulation may directly or indirectly discriminate against certain groups to the benefit of others. This form and specific context of potential discrimination may affect especially those DPs dispossessed who find themselves outside of the country where the violations took place, or otherwise prevented from accessing the domestic mechanisms later established for adjudication of HLP restitution claims. (See also **Principle 12: National Procedures, Institutions and Mechanisms** and **Principle 13: Accessibility of Restitution Claims Procedures** below.)

What are some hidden or indirect forms of discrimination?

Discrimination can arise when restitution-claims criteria are restricted to current citizens and/or current residents. Several formerly Communist countries experienced this to be an indirect form of discrimination. The corresponding laws have been revised now, and treat citizens and non-citizens, as well as residents and non-residents, more equitably in HLP restitution. In the case of Rwanda, anyone who had fled that country more than ten years before the establishment of certain restitution rights were denied HLP restitution. Such a regulation may give rise to institutionalized material discrimination.

In other cases, restitution claims are restricted to certain periods of time during which the expropriation took place, in effect discriminating against other victims which may have also suffered losses, but during a different (usually previous) historical period.[400] By contrast, the Croatian Supreme Court ruled as unconstitutional a law that attempted to revoke ownership rights over private property for owners who had not lived in their property for more than ten years.[401]

If users of this handbook identify any such patterns of discrimination, notwithstanding whether the discrimination is intentional or not, that information should be brought to the attention of relevant authorities, accompanied by concrete suggestions for remedial action consistent with these Principles.

Useful Guidance

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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 programs should be fully investigated and prosecuted.

20.4 States should adopt specific measures to prevent the destruction or looting of contested or abandoned housing, land and property. In order to minimize destruction and looting, States should develop procedures to inventory the contents of claimed housing, land and property within the context of housing, land and property restitution programs.

20.5 States should implement public information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of non-compliance with housing, land and property restitution decisions and judgments, including failing to vacate occupied housing, land and property voluntarily and damaging and/or looting of occupied housing, land and property.

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

States should designate specific public agencies to be entrusted with enforcing HLP-restitution decisions and judgments. They should ensure, through law and other appropriate means, that all spheres of government, including local and national governments and authorities, are legally obligated to respect, implement and enforce HLP-restitution decisions and judgments made by relevant bodies.

The enforcement of restitution decisions and judgments will call for specific measures to prevent any obstruction to their enforcement. Threats or attacks against officials and agencies carrying out restitution based on such decisions and judgments must be fully investigated and prosecuted.

Such specific measures should prevent the destruction, booby-trapping or looting of contested or abandoned HLP. To minimize destruction and looting, States should develop procedures to inventory the contents of claimed HLP within the context of restitution programs. Preventing the sabotage of contested or abandoned HLP and its consequences may require States to carry out pre-emptive sweeps to detect, disarm and remove IEDs or mines before allowing the return and repossession by refugees or DPs. States must prosecute and punish those suspected and found guilty of such conduct violating DPs' HLP rights.

States should implement public-information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of noncompliance with HLP-restitution decisions and judgments, including failure to vacate occupied HLP voluntarily and damaging, sabotaging, booby-trapping and/or looting such HLP.

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

(See also the **Other Overarching Principle: Rule of Law** above.)

Opportunities for Applying Principle 20

Prior to actual recovery and re-possession of homes – Because the restitution process is often complex and comprised of layers of laws, history and conflict, restitution mechanisms must also be provided with the parallel enforcement authority needed to deal effectively with the claims submitted to them and subsequent decisions.

The HLP components of peace operations need to be able to rely upon the support of both the political leadership of the operation as well as military leadership to enforce HLP rights provisions and restore HLP rights to those whose rights have been recently, or not so recently, violated.[402]

In case of* ex gratia *compensation – In the case of the War on Lebanon (2006), the urgency of providing relief for survivors, including DPs and victims of house destruction and damage, has driven most of the local data collection to date. The response on the part of Government of Lebanon (GoL) institutions, *Jihad al-Bina'* and NGOs has been in the form of *ex gratia* payments as "compensation."

The Higher Relief Commission (HRC) is the official organization responsible for managing the GoL response to humanitarian crises and disasters, directing and coordinating all donations to the GoL. The Office of the Prime Minister, the Ministry for the Displaced, the Fund for the Displaced, the Council of the South, the Public Corporation for Housing and the consultants have cooperated in the development of the

compensation mechanism. Relying on the damage surveys of the GoL-contracted private firm Khatib & Alami, the HRC issues compensation payments by cheque through the Council of the South. The HRC has announced that these *ex gratia* payments will continue regularly, until all eligible applicants' demands are met. The Prime Minister has pledged that HRC will compensate owners of totally damaged homes in Beirut's southern suburbs with disbursements totalling LL 80 Million (ca. €43,000).

On 25 September, HRC started issuing payments to residents of damaged homes in nine villages (Janata, Bistat, Kanisa, Humairy, Malikiya, Yanuh, Birghliya, Dayr `Amis in the Qadha of Tyre, and Alman in the Qadha of Marj`ayun). By the end of October, applicant 624 families suffering damaged homes, and 23 with homes fully destroyed, had received the first of the two-phased HRC payments.[403]

To address the legal complexity of co-ownership in *al-Dhahiya*, mentioned below, the GoL has established a special committee to facilitate the reconstruction process "while allowing for exceptions to the laws normally regulating construction." Judge Shukri Sadir presides over the committee comprised of the Office of the Prime Minister, the Ministry of Interior, the Ministry of Environment, the concerned governorate, the CDR, the Order of Engineers, the Cadastral Office, and the Commander of the Internal Security Forces.[404]

Within the context of peace operation-driven land and property initiatives – In East Timor, UNTAET established a Land and Property Unit (LPU) responsible for a range of relevant issues, including advocacy efforts in support of restitution. Preceding any formal restitution programme, LPU was instrumental in exploring the prospects of restitution in the country, designing restitution laws and institutions and preparing draft regulations on housing and land restitution in East Timor.

Numerous other examples encourage prompt attention and response to HLP restitution within peace operations. The nearest example to the MENA region is Darfur, Sudan (cited above). However, the practice is uneven, with few historical examples in the MENA region where peace operations embodied HLP restitution objectives or capabilities. However, options for international cooperation and assistance in this case is to develop and deliver curricula for DPKO and local law enforcement to be conversant with HLP issues and restitution mechanisms.

Where multiple local or national authorities are involved in the enforcement of restitution decisions and judgments - The enforcement of restitution rights is invariably a difficult and complex undertaking that requires cross-institution coordination. In Iraq, for example, the PCC has had to rely on the Enforcement Departments and the Property Registration Offices, part of the Ministry of Justice. While these bodies are legally bound to implement the decisions taken by the PCC, it has no control or oversight over their actions. In such circumstances, it will be important to ensure coordination and collaboration between the restitution institution and the authorities in charge of enforcement.

Even where a restitution body does not have the legal power to enforce its decisions, it will be crucial for it to track and monitor such enforcement, especially in post-conflict contexts where the State apparatus is weakened and overburdened. The restitution body can sensitise the State authorities to the problems encountered and exert pressure or persuasion where needed to ensure the timely implementation and enforcement of its decisions. In doing so, this handbook and Principle 20 should serve that purpose.

Common Questions

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

The reliance on civil authorities to enforce restitution decision should be the first and preferred option. However, where relevant and necessary, national law enforcement services (police or gendarme), international police forces and/or peacekeeping forces could become formally involved in the enforcement and protection of adjudicated HLP rights, but care is needed so that such involvement does not take on a repressive character, threatening the rights and perceptions of the local population.

The civilian law enforcement or peace operations may need to seek the support of the military in HLP rights-enforcement, including prevention of illegal forced evictions and arresting offenders, stopping acts of violence against civilians, protecting housing from looting, damage or sabotage, and assisting in restitution-rights enforcement by evicting secondary occupants deemed to be illegally occupying housing.

The national military also can play a positive role in mediating HLP disputes, and should receive training to build capacity to assist in implementing HLP-restitution rights. The presence of international military forces during evictions to enforce restitution claims, if done, should be limited, in order not to raise the profile of the eviction or otherwise spark tensions between communities in sensitive environments.

Useful Guidance

Bjelica, Jelena. "Afghanistan's Returning Refugees: Why are so many still landless?" *Afghanistan Analysis Network* (29 March 2016), at: https://www.afghanistan-analysts.org/afghanistans-returning-refugees-why-are-so-many-still-landless/;
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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 be used when the remedy of restitution is not factually possible or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.
21.2 States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.

Within the reparations framework, compensation is an indemnification for any economically assessable loss, cost or damage that is appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of IHL such as:

(a) Physical or mental harm;
(b) Lost opportunities, including employment, education and social benefits;
(c) Material damages and loss of earnings, including loss of earning potential;
(d) Moral damage;

(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.[405]

Users of this handbook will recall that compensation in cash or kind does not substitute other elements of reparation, including restitution of the original situation before the violation. When considering compensation as a remedy, States and HLP-restitution practitioners should determine first that *restitution* is physically or factually impossible as an exceptional circumstance, namely when housing, land and/or property no longer exists due to *force majeure*, as determined by an independent or impartial tribunal. Even then, the rightful tenure holder over the HLP should have the option to receive the HLP in a state of repair or reconstruction, whenever possible. Sometimes, a combination of compensation, restitution and/or other reparation elements may be the most-appropriate remedy and form of restorative justice.

These Principles take the view that HLP-restitution practitioners must explore and exhaust all return-based restitution options first, before determining a form of restitution as physically impossible. As noted above, cash-based compensation is always a less-durable solution than restitution.[406]

The UN Basic Principles and Guidelines on Development-based Evictions and Displacement provide that:

> Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted [persons] should be compensated with land commensurate in quality, size and value or better.[407]

Likewise, the UNDRIP enshrines this lesson. It states:

> Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.[408]

However, this would not be the case in the event that groups of refugees or DPs, as injured parties, *consciously and voluntarily choose or express a clear preference* for compensation-based durable solutions. They should know the risk that such a choice may conclude the restitution process for them and result in forfeiting future HLP-restitution claims. This would be particularly true when refugee-hosting States forcibly repatriate refugee groups, despite clear indications that conditions for safe and dignified return were not in place and that the refugees were opposed to return. Another example would be a situation wherein a long period has passed since the displacement, and the displaced have rebuilt their lives elsewhere in such a way that they would not want to relocate, even under safe conditions for return.

Users of this handbook should be cognizant that those hoping to prevent restitution and return may make seemingly ingenuous offers of cash or other forms of compensation to refugees and DPs, thereby extinguishing outstanding restitution claims. These practices need to be closely examined to ensure that they not imbed violations of norms reflected in these Principles, or coerce DPs to return prematurely, coercively, or in inadequate circumstances that will incur further costs or losses beyond the compensation offered.

Opportunities for Applying Principle 21

Documenting and quantifying values subject to loss or damage – Methods for documenting and quantifying HLP and other values lost in one of four possible stages of HLP violation can be found in an Eviction Impact Assessment (EvIA), as called for in the *UN Principles and Guidelines on Development-based Displacement and Eviction*. That means that a thorough documentation and quantification exercise should

precede any development or infrastructure project involving the movement of people's habitual residence, in order to know the full costs and consequences of that displacement subject to reparation.

While such an EvIA is required in the context of development activities, it might not always be possible in a conflict situation. The distinction is not only a matter of advanced notice that normally would come in the case of a development enterprise, presumably allowing for sufficient time to document the HLP and other values at stake. The development context should accompany organized measures, facilities and resources to undertake such an inventory that are not available in the case of an imminent attack. Developing a baseline in advance of displacement is an ideal that often does not exist in coercive environments and emergency situations.

Nonetheless, before an eviction or displacement in the any context, we can anticipate two phases: (I) the values present in the normal situation without any threat of eviction or displacement and (II) the change in values resulting from an announced or planned eviction or displacement, before it is carried out. These correspond to the tools and methods required to carry out (1) a baseline study and (2) an assessment of values as a result of a notice or threat of eviction, displacement or resettlement.

In such an enumeration of HLP and other values subject to loss in the case of displacement, several dimensions of values should be taken into consideration. The HLP values would figure among these and, therefore, may be part of a broader assessment of values at stake. A comprehensive assessment likely would quantify values to cover victims' material values/assets, as well as victims' nonmaterial values/assets. It would be most reliable and complete when conducted before the displacement, when material evidence is present, but it could be possible to reconstitute the HLP values a stake at a distance from the original location of residence based on memory, documentation and/or corroborative testimony. However, the margin of error would be greater in that case, due to forgetfulness and/or loss of substantiating documentation. (See HLRN. Violation Impact-assessment in **Useful Guidance** below.)

When returnee housing is damaged or destroyed – Forced displacement caused by conflict is almost invariably accompanied by widespread damage and destruction of housing and property. In post-1991 Kosovo, 50% of the entire housing stock was damaged or destroyed. In Bosnia-Herzegovina, 65% of housing was destroyed and, in East Timor, some 80% of the housing stock was reduced to rubble In northern Iraq. In the Old City of Mosul, 31% of the residential buildings were severely damaged or destroyed as a result of the retaking operations. Some 5,000 residential buildings out of approximatively 16,000 in the Old City were severely damaged or destroyed.[409]

In such instances, a combination of restitution rights guaranteeing the claimant the right to recover their original homes and lands, *and* the provision of financial assistance in the form of compensation for the purposes of rebuilding or repairing the home concerned may be the most-sustainable and equitable way to provide a durable solution. Because the destruction of property effectively precludes full restitution, the only adequate alternative may be compensation, in order to restore the loss of the destroyed property. Compensation must be granted with the same intent as restitution, however, so that victims return as far as possible to their original pre-loss or pre-injury position (i.e., *status quo ante*). When compensation is provided, it must be in *reasonable*, in relation to the value of the damage suffered.

In operation, programmes such as the NRC's ICLA, in Iraq, has helped beneficiaries lodge claims for compensation for damaged and destroyed property as a result of the conflict with ISIL. Those claims are first filed with the court, which then is forwarded to the Investigations Committee for an individualised assessment of the value of the housing, before recommending the payment of compensation.

When displacement took place long before remedies are available – Another situation where compensation may be the more-appropriate remedy is where the displacement happened many years before a remedy is made available, and the victims, or their heirs, have rebuilt their lives elsewhere and prefer to stay in that location and to receive financial compensation for the loss of their original HLP. This may arise in a situation where one or more generations have not lived in the property from which their forebears were displaced. In such cases, care must be taken that all those entitled to restitution or compensation are duly informed of all their rights and choices in full knowledge of all of these rights.

Actual examples of mechanisms where such a choice is offered are the CRRPD, now PCC, in Iraq and the procedures being set up pursuant to the Peace and Justice Law in Colombia by the National Reparations and Reconciliation Commission. Similar considerations may apply to former right holders or their descendants who had to leave property behind when they fled their original place of residence, and who have obtained status and established themselves abroad, and prefer compensation to restitution.

Common Questions

Can compensation be offered without first attempting to secure restitution rights?
No. According to the Pinheiro Principles and underlying law, restitution is the primary remedy for reversing displacement, unless it is the expressed wish of refugees and DPs to receive compensation *in lieu* of restitution. Compensation cannot be *imposed* on refugees or DPs and, unless it is their preferred remedy and/or that the DPs—understanding that the recovery of original housing and properties may be no longer physically possible—opt for remedies combined with the other reparation criteria.

Is cash the only form of acceptable compensation? Cash compensation should be reserved only for any economically assessable damage resulting from violations of international human rights and humanitarian law, such as: physical and mental harm, lost opportunities (including education), material damages or loss of earnings, harm to reputation or dignity, costs required for legal or expert assistance, medicines and medical services, and psychological and social services, and lost or destroyed immovable and/or movable assets, including the destruction or damage of one's original home. Even in those cases, cash compensation is generally to be avoided in countries without a functioning housing and land market, secure saving banks, educational systems and rehabilitation services.

The first alternative to cash compensation would be construction by the State (i.e., government), or subsidized by the State. Other housing-based or fair alternative arrangement might involve other creative measures, including: the provision of alternative land plots, a public housing fund issuing government bonds, vouchers or individual subsidies to be redeemed in the construction of replacement housing; government assistance for returnees in finding alternative housing; tax reductions to returnees for a fixed period; favourable placement on official housing waiting lists; state-land plots allocated to returnees; and/or housing credits for building materials should returnees choose to build their own new housing.

Is cash compensation ever a suitable remedy for land loss?
Only the returnees can answer this question. Land may have immeasurable value related to the culture, identity, traditions and specific livelihood of a distinct community. The principles of FPIC and consensual return will defer that determination to the affected population.

In certain situations, either cash compensation or assigning individual plots to replace collective land tenure may do more harm than good to such communities, leading to their dissipation. One should bear

in mind the covenanted prohibition: "In no case may a people be deprived of its own means of subsistence."[410] (See **The Right to Self-determination** under overarching principles above.)

Is destroyed housing exempt from restitution claims?

While the destruction or non-existence of claimed HLP is a reality in many countries dealing with restitution, such situations cannot be used as a rationale for the payment of compensation in lieu of restitution. Rather, care must be taken to ensure that restitution remedies are interpreted in a broad and flexible manner (which may involve, but not replaced by, compensation). Restitution can be both claimed and awarded, even to buildings and villages or towns that physically no longer exist. The mere destruction of property does not and cannot extinguish such claims, even though such obliterative circumstances certainly complicate the restitution process.

Useful Guidance

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Smit, Anneke. *The Property Rights of Refugees and Internally Displaced Persons: Beyond Restitution* (New York: Routledge, 2012);
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SECTION VI. THE ROLE OF THE INTERNATIONAL COMMUNITY, INCLUDING INTERNATIONAL ORGANIZATIONS

PRINCIPLE 22: Responsibility of the International Community

22.1 The international community should promote and protect the right to housing, land and property restitution, as well as the right to voluntary return in safety and dignity.

22.2 International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition against unlawful or arbitrary displacement and, in particular, the prohibition under international human rights law and related standards on the practice of forced evictions.

22.3 International organizations should work with national governments and share expertise on the development of national housing, land and property restitution policies and programs and help ensure their compatibility with international human rights, refugee and humanitarian law and related standards. International organizations should also support the monitoring of their implementation.

22.4 International organizations, including the United Nations, should strive to ensure that peace agreements and voluntary repatriation agreements contain provisions related to housing, land and property restitution, including through *inter alia* the establishment of national procedures, institutions, mechanisms and legal frameworks.

22.5 International peace operations, in pursuing their overall mandate, should help to maintain a secure and stable environment wherein appropriate housing, land and property restitution policies and programs may be successfully implemented and enforced.

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

22.7 International organizations and peace operations should avoid occupying, renting or purchasing housing, land and property over which the rights holder does not currently have access or control, and should require that their staff do the same. Similarly, international organizations and peace operations should ensure that bodies or processes under their control or supervision do not obstruct, directly or indirectly, the restitution of housing, land and property.

In our interdependent and globalized world, the global community of States shares a global responsibility for the crisis of refugees and displacement affecting every region. Keys to resolving this crisis from its preventive and remedial aspects are the respect, protection and fulfilment of HRAH and HLP restitution, as well as the right to voluntary, safe and dignified return for subjects of HLP violations and deprivation.

In all cases, the international community's "responsibility to protect" must be balanced with respect for state sovereignty. That balance has been an issue of active debate in the MENA region at least since the Ottoman Capitulations and mid-19th Century *tanzimat*.[411] More recent interventions in the region on the pretext of protection have sparked renewed debate.[412] (See also **Useful Guidance** below.)

States and their successive governments bear primary responsibility for the conditions that result in human-made causes of the well-founded fear of persecution and threats to life and livelihood that lead to waves of refugees and DPs. These conditions may arise from both domestic and/or foreign policies. When such policy consequences reach transboundary dimensions, neighbouring and more-distant States assume the responsibility for ministering to the affected populations.

While these migrations may bring certain economic advantages to receiving States in the longer term, the interim human, political and material costs can be immediate and enormous. In addition to the devastating costs, losses and damage to refugees and DPs, the global responsibility is often discharged locally, including by and through local governments and local authorities. Both the requirements of justice and the interests of global peace and stability pose the restitution of refugees' and DPs' HLP rights as the foreseeable prospect for remedy within the principles and framework of reparation.

Member States in UNSC should consider their role in upholding the peace and security pillar of the UN Charter consistently and without favour to parties responsible for conditions leading to refugee situations and displacement. In the mandate of peace operations, the UNSC should emphasize consistently the importance of HLP restitution, including, *inter alia*, supporting the establishment and development of national procedures, institutions, mechanisms and legal frameworks to enable HLP restitution.

International financial, trade, development and other related institutions and agencies, including member or donor States with voting rights in such bodies, should take fully into account the prohibition against unlawful or arbitrary displacement and, in particular, the prohibition under binding international human rights law and related standards prohibiting the practices of forced eviction, displacement and population transfer that often result from large-scale development projects. The rebranding of forced eviction in the

development context with mollifying euphemisms such as “involuntary resettlement” does not alleviate their consequences.[413]

International organizations should work with national and local governments and authorities to share expertise on the development of national HLP-restitution policies and programs and help ensure their compatibility with international human rights, refugee law, IHL and related standards. International organizations should also support the monitoring of their implementation as a means of preventing the conditions that lead to displacement and the pursuit of refuge.

Viewing both prevention and remedy of the violations that result in waves of refugees and DPs, regional and international multilateral bodies, including those of the United Nations, should implement and maintain consistently the peremptory norms, general principles of international law and treaty provisions that uphold the inter-related purposes of peace and security, forward development and human rights.

In pursuing their mandate, international peacekeeping operations should help to maintain a secure and stable environment wherein appropriate HLP-restitution policies and programs may be successfully implemented and enforced. Depending on the context, missions should be enabled to support implementation of HLP-restitution rights, including support to the enforcement of restitution decisions and judgments.

International organizations and peace operations scrupulously should avoid occupying, renting or purchasing HLP over which the tenure 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 supervision do not obstruct, directly or indirectly, HLP restitution.

UN engagement across the pillars of the UN Charter (human rights, sustainable development, and peace and security) can provide the needed neutrality in restitution processes to ensure that both specific human rights and the overarching principles of implementation are fulfilled. The peace-and-security pillar of UN operations specifically engages key UN entities such as DPKO, the Department of Political Affairs, the Peacebuilding Support Office and OHCHR field presence.

During peacekeeping operations, areas of engagement relevant to HLP involve supporting preventive diplomacy, conflict mediation and peace agreements; rebuilding key rule-of-law-related institutions and political systems (constitution, elections, etc.) and TJ; strengthening the police, justice and correctional institutions and their accountability; protecting civilians; and promoting and protecting human rights.

Peacekeeping should include the protection of abandoned properties, land records and other assets; building evidence around the impact of land on peace building; creating institutional space for land and conflict in peace building; providing dedicated capacity on land and conflict. While it is sometime difficult to allocate funds, engagement may involve *ad hoc* engagement as land functions not mentioned in mission mandates. UN staff report increasing requests from country-level staff for technical assistance, not least due to a growing interest problem solving related to HLP issues, including the disposition of related natural resources.[414]

The High-level Panel on Peace Operations has determined that political solutions should drive the UN response and peace operations.[415] To overcome such intractable problems as deep-seated discrimination, the UN and its neutral and publicly interested partners can play a critical role, but may require increased

capacity for conflict mediation and improved analysis of root causes, strategy and planning to contextualize missions. Such an approach to peace, with its HLP-restitution component, would allow HLP issues to be better embedded in the analysis of, and response to conflict, the sequencing and implementation of peace agreements, and to be a conscious part of system-wide capacity development.

UNDP, FAO, UNEP, UN Women (especially operationalizing UNSC Resolution 1325) and UN-Habitat are key UN entities within the development pillar that engage in areas relevant to land and conflict. These agencies undertake a wide range of functions that may contribute to TJ and other processes to correct and reverse large-scale abuse of the past; conflict analysis; support to the domestication of international conventions; and the provision of frameworks for land governance, management of land use and natural resources in view of conflict prevention. They can strengthen the role of women and marginalized groups in peacebuilding; managing urban growth dealing with the pressures on urban land due to displacement; repairing and developing land systems; related capacity development; dispute resolution; and support to land reform; land tool development and land policy processes that operationalize the overarching principles and specific human rights related to HLP restitution.

In the human rights pillar, OHCHR plays the major role in promoting human rights-based engagement across UN agencies and throughout the conflict cycle at country level by providing capacity to local actors, including peace-keeping operations; improving access to justice and in monitoring of human rights violations, including dispossession and forced displacement. At the global level, OHCHR supports the UN Human Rights System, with its law-bound treaty-monitoring bodies, political bodies and functions of the human rights council and its factual Special Procedures such as thematic and country-specific Special Rapporteurs, Independent Experts and Working Groups. OHCHR also bears a unique inter-agency mandate to build human rights methods and capacity across the UN family.

The Inter-Agency Standing Committee, dealing with humanitarian affairs, which spans both the human-rights and peace-and-security pillars of the UN, has developed humanitarian response and coordination mechanisms involving the Shelter and Protection Clusters and overseeing a Housing Land and Property Area of Responsibility. Their functions have developed checklists to address HLP issues, recognized how de-linking emergency response and longer-term institutional development and human rights implementation can cause problems that lead to further conflict, erosion of self-determination and local self-reliance. These operations have incorporated the learned lesson that HLP issues need to be addressed early on in an emergency, and require long-term restitution effort.

However, the UN cannot do everything on its own. Instead, it needs to position itself and clarify its role at different levels in relation to other actors. These include regional organizations, international NGOs, the private sector, academia, CSOs and the complementarity of role that all could or should play. For example, IOM, including through its lead role in the Global Camp Coordination and Management Cluster, works on internal displacement and land restitution. UNHCR, with partners such as NRC and local NGOs, assists refugees and DPs on matters of displacement, shelter, HLP and mapping legal formal and informal frameworks relevant to land. The local UN Resident Coordinator System should ensure that these efforts operate in complementary fashion.

These challenges are recognized in the UN Secretary General's 2011 *Policy Decision on Durable Solutions for Displaced People*,[416] which endorses a framework on Ending Displacement in the Aftermath of Conflict. The Decision acknowledged that such coordination has not always been achieved, particularly regarding the transition from humanitarian to development assistance. A Solutions Alliance was operationalized in April 2014 as an inclusive partnership to pursue a global advocacy strategy that:

- Supports strategic planning by affected states and others with respect to displacement, including advocacy on specific legal, economic, social and political matters relevant to achieving solutions,
- Ensures that displacement is on the global development agenda and included in national and local development planning, and
- Facilitates the cooperation of all relevant actors operating in selected thematic areas.[417]

Opportunities for Applying Principle 22

Coordinating multi-agency restitution efforts within peace operations – When the international community is involved in restitution efforts at the national level, it is likely that this will be a multi-agency effort involving the staff of many different organisations. In Bosnia-Herzegovina, for instance, over 100 agencies were involved in the restitution and return process. To prevent duplication of efforts or carrying out mutually exclusive activities that work at cross purposes to one another, it is important for users of the handbook to assist in developing a consolidated approach among all agencies involved in HLP restitution. Close links at both the field and headquarters levels need to be developed, and the most effective means for coordinating all of the restitution activities of the agencies need to be established. Without a coordinated approach to these issues (which also directly involves the relevant local and national governmental institutions if there is substantial international involvement), restitution can be seriously threatened, or at best, slowed down considerably.

Repairing and rebuilding just and inclusive communities with the full and progressive enjoyment of all human rights has required the restitution of HLP wherever possible.[418] In Darfur, UNAMID's mission has sought to ensure "a secure environment for economic reconstruction and development, as well as the sustainable return of DPs and refugees to their homes."[419] However, UNAMID was not mandated to carry out reconstruction, as this was viewed as a task more appropriate for other UN branches and other parties. Nonetheless, UNAMID found itself in the position to ensure the coordination among other agencies that could do so.

Common Questions

What special measures has the international community pursued to secure restitution rights?

One of the more-interesting examples of how the international community facilitated the exercising of restitution rights is a Property Legislation Implementation Plan (PLIP), as was conducted in Bosnia-Herzegovina. Although such initiatives will not always be possible or relevant to all restitution cases, the PLIP is a good example of how a coordinated approach by the main international agencies can play a decisive role in successfully monitoring a restitution process led by domestic institutions. In other instances, the international community has assisted in the filing of human rights complaints to relevant courts, treaty bodies or other international policy forums. NGOs and legal scholars played important roles in filing HLP-restitution claims before EtCHR and revising UNHCR legal interpretation and policy to include Palestinian refugees within the 1951 Convention's protection regime.[420]

What are some challenges of inter-agency coordination?

The Cluster System has been found to operate effectively in certain cases. The return of DPs and reconstruction of homes in Lebanon following the 2006 War provides many lessons. In a country with no ministry of housing, various aspects of physical development related to housing was distributed across various ministries and agencies. Wide coordination was urgently needed. However, the UN Shelter Cluster also omitted from the smaller and, particularly, the local civil-society groups already active in shelter and reconstruction from the otherwise-collective effort.[421]

In operation, not all participants in the Cluster System share the same normative framework and objectives, complicating coordination and outcomes. The World Bank does not operate with a human right framework under the UN Charter, despite the standing obligations of its constituent Member States. While the World Bank is increasing its work on fragility, conflict and violence, it also has an important role in reconstruction and development with larger and long-term programmes, particularly on land administration. Duty-bound Member States are key to achieving desirable outcomes, both as the parties requesting support and as donors, operationalizing these Principles.

How can the international community best avoid undermining the legitimate HLP -restitution rights of refugees and DPs? Principle 22.7 addresses the potentially negative impacts that international organisations can have upon the enjoyment of HLP restitution rights in countries where they operate, and urges agencies to avoid using or buying housing, land or property belonging to refugees and DPs. Too many examples have involved staff of international organisations, including UN agencies, residing in refugee homes while working in the field. Great care should be exercised to ensure that the HLP-restitution rights of refugees and DPs are neither undermined nor diminished because members of the international community's putative aid givers have occupied their homes. Users of this handbook must ensure that their organisations adopt appropriate polices to eliminate this legal and ethical breach. In both Bosnia-Herzegovina and Kosovo, for example, UN staff were asked to prove that the owner of housing rented by UN staff was, in fact, the legitimate owner.

Useful Guidance

Inter-Agency Standing Committee, *Growing the Sheltering Tree: Protecting Rights Through Humanitarian Action – Programme & Practices Gathered from the Field* (Geneva: IASC, 2002), at: https://interagencystandingcommittee.org/system/files/iasc_growing_sheltering_tree_2002_en.pdf;

UNHCR/OHR and the CRPC, *Property and Housing Issues Affecting Repatriates and Displaced Persons in Bosnia-Herzegovina*, UNHCR publication, Geneva, 1999*;*

UNHCR and National Human Rights Commission (NHRC), *Land, Housing and Property, Proposals to the Parties for Comprehensively Addressing Land, Housing and Property Rights in the Context of Refugee and IDP Return within and to Sri Lanka* (Colombo: UNHCR and NHRC, 22 April 2003);

Cunliffe, Philip. "From ISIS to ICISS: A critical return to the Responsibility to Protect report," *Cooperation and Conflict* Vol. 51, Issue 2 (18 November 2015), at: http://journals.sagepub.com/doi/abs/10.1177/0010836715612854*;*

International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), at: http://responsibilitytoprotect.org/ICISS%20Report.pdf;

Luensmann, Valerie. "The Impact of the ICISS Report on State Sovereignty," University of Westminster, 18 January 2014), at: http://www.e-ir.info/2014/01/18/the-impact-of-the-iciss-report-on-state-sovereignty/;

UNHCR, *Inter-Office Memorandum No. 104/2001 – UNHCR Field Office Memorandum No. 104/2001 – Voluntary Repatriation and the Right to Adequate Housing*, 28 November 2001;UNDP and UNHCR, Global Cluster for Early Recovery, (Technical Working Group on Durable Solutions) with the Global Protection Cluster. *Durable Solutions Preliminary Operational Guide* (New York: UNDP, January 2016), at: https://reliefweb.int/sites/reliefweb.int/files/resources/DS-022416.pdf [AR: https://reliefweb.int/sites/reliefweb.int/files/resources/ds_inside_pages_low_rez_0.pdf];

Welsh, Jennifer, Carolin Thielking and S. Neil MacFarlane. "The Responsibility to Protect: Assessing the Report of the International Commission on Intervention and State Sovereignty," *International Journal*, Vol. 57, No. 4 (September 2002), at: http://journals.sagepub.com/doi/pdf/10.1177/002070200205700401.

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.

These Principles should be interpreted and applied in accordance with national legal systems and institutions, and consistently with existing obligations under national and international law with due regard to voluntary commitments under applicable regional and international instruments.

Nothing in these Principles should be read as limiting or undermining any legal obligations to which a State may be subject under international law. Nor does any Principle or guidance in this Handbook derogate the rights of States (vis-à-vis other States), while they do emphasize the individual, collective, domestic and extraterritorial obligations of all States under human rights, refugee law and IHL. The Principles and this Handbook assume that the measures called for take place within the context of institutions and organs of the State administered by parties that behave in a State-like manner and operate accordingly within the norms established through the cooperation of States, including the unitary system of international law.

ANNEX 1: MENA Treaty Ratification Status

(as of February 2013)

	CERD	CERD: Art. 14	CCPR	OPT. PROT.	2nd OP	CESCR	OP-CESCR	CAT	CAT : Art. 22	OPCAT	CEDaW	CEDaW: OP	CRC	CRC:OPSC	CRC: OPAC	CRC: OPIC***	CMW	CRPD *	CRPD: OP *	CPPED **	CPPED ** Art. 31	CPPED ** Art. 32	Refugee Conv.	Refugee Protocol	4th Geneva Conv.	Rome Statute (ICC)	No statutory limit	Statelessness `54	Statelessness `61	ILO No. 169	Arab HR Charter	AU Charter	AU Refugee Conv.	ACtHPR	Kampala Conv.	AU Ǫ's Protocol	
Afghanistan	1	-	1	-	-	1	-	1	-	-	1	-	1	1	1	-	-	1	1	-	-	-	1	1	1	1	-	-	-	-	-	-	-	-	-	-	*Afghanistan*
Algeria	1	1	1	1	-	1	-	1	1	-	1	-	1	1	1	-	1	1	-	-	-	-	1	1	1	S	-	1	-	-	1	1	1	1	1	1	*Algeria*
Bahrain	1	-	1	-	-	1	-	1	-	-	1	-	1	1	1	-	-	1	-	-	-	-	-	-	1	S	-	-	-	-	1	-	-		-	-	*Bahrain*
Comoros	1	-	-	-	-	-	-	-	-	-	1	-	1	1	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	1	1	1	1	1	*Comoros*
Cyprus	1	1	1	1	1	1	-	1	1	1	1	1	1	1	1	S	-	1	1	-	-	-	1	1	1	1	-	-	-	-	-	-	-	-	-	-	*Cyprus*
Djibouti	1	-	1	1	1	1	-	1	-	-	1	-	1	1	1	-	-	1	1	-	-	-	1	1	1	1	-	-	-	-	-	1	S	-	S	1	*Djibouti*
Egypt	1	-	1	-	-	1	-	1	-	-	1	-	1	1	1	-	1	1	-	-	-	-	1	1	1	S	-	-	-	-	-	1	1	-	1	-	*Egypt*
Iran	1	-	1	-	-	1	-	-	-	-	-	-	1	1	-	-	-	1	-	-	-	-	1	1	1	S	-	-	-	-	-	-	-	-	-	-	*Iran*
Iraq	1	-	1	-	-	1	-	1	-	-	1	-	1	1	1	-	-	-	-	1	-	-	-	-	1	-	-	-	-	-	1	-	-	-	-	-	*Iraq*
Israel	1	-	1	-	-	1	-	1	-	-	1	-	1	1	1	-	-	1	-	-	-	-	1	1	1	S	-	1	1	-	-	-	-	-	-	-	*Israel*
Jordan	1	-	1	-	-	1	-	1	-	-	1	-	1	1	1	-	-	1	-	-	-	-	-	-	1	1	-	-	-	-	1	-	-	-	-	-	*Jordan*
Kuwait	1	-	1	-	-	1	-	1	-	-	1	-	1	1	1	-	-	-	-	-	-	-	-	-	1	S	1	-	-	-	1	-	-	-	-	-	*Kuwait*
Lebanon	1	-	1		-	1	-	1	-	1	1	-	1	1	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	1	-	-	-	-	-	*Lebanon*
Libya	1	-	1	1	-	1	-	1	-	-	1	1	1	1	1	-	1	-	-	-	-	-	-	-	1	-	1	1	1	-	1	1	1	1	1	1	*Libya*
Mauritania	1	-	1	-	-	1	-	1	-	1	1	-	1	1	-	-	1	1	1	1	-	-	-	-	1	-	-	-	-	-	-	1	1	1	-	1	*Mauritania*
Morocco	1	1	1	-	-	1	-	1	1	-	1	-	1	1	1	S	1	1	1	-	-	-	1	1	1	S	-	-	-	-	-	1	-	-	-	-	*Morocco*
Oman	1	-	-	-	-	-	-	-	-	-	1	-	1	1	1	-	-	1	-	-	-	-	-	-	1	S	-	-	-	-	-	-	-	-	-	-	*Oman*
Palestine	1	-	1	-	-	1	-	1	1	-	1	-	1	-	1	-	-	1	-	-	-	-	-	-	1	1	1	-	-	-	1	-	-	-	-	-	*Palestine*
Qatar	1	-	-	-	-	-	-	1	-	-	1	-	1	1	1	-	-	1	-	-	-	-	-	-	1	-	-	-	-	-	1	-	-	-	-	-	*Qatar*
Sahrawi Arab Dem. Republic	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	1	-	1	1	S	*Sahrawi Arab Dem. Republic*
Saudi Arabia	1	-	-	-	-	-	-	1	-	-	1	-	1	1	1	-	-	1	1	-	-	-	-	-	1	-	-	-	-	-	1	-	-	-	-	-	*Saudi Arabia*
Somalia	1	-	1	1	-	1	-	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-	1	1	1	-	-	-	-	-	-	1	-	-	S	S	*Somalia*
Sudan	1	-	1	-	-	1	-	-	-	-	-	-	1	1	1	-	-	1	1	-	-	-	1	1	1	S	-	-	-	-	-	1	1	-	1	S	*Sudan*

	CERD	CERD : Art. 14	CCPR	OPT. PROT.	2nd OP	CESCR	OP-CESCR	CAT	CAT : Art. 22	OPCAT	CEDAW	CEDAW: OP	CRC	CRC:OPSC	CRC: OPAC	CRC: OPIC	CMW	CRPD *	CRPD: OP *	CPPED **	CPPED ** Art. 31	CPPED ** Art. 32	Refugee Conv.	Refugee Protocol	4th Geneva Conv.	Rome (ICC)	No statutory limit	Statelessness `54	Statelessness `61	ILO No. 169	Arab HR Charter	AU Charter	AU Refugee Conv.	ACtHPR	Kampala Conv.	AU ♀'s Protocol	
Syrian Arab Rep.	1	-	1	-	-	1	-	1	-	-	1	-	1	1	1	-	1	1	1	-	-	-	-	-	1	S	-	-	-	-	1		-	-	-	-	*Syrian Arab Rep.*
Tunisia	1	-	1	1	-	1	-	1	1	1	1	1	1	1	1	-	-	1	1	1	-	-	1	1	1	1	-	1	1	-	-	1	1	1	1	S	*Tunisia*
Turkey	1	-	1	1	1	1	-	1	1	1	1	1	1	1	1	-	1	1	-	-	-	-	1	1	1	-	-	1	-	-	-	-	-	-	-	-	*Turkey*
UAE	1	-	-	-	-	-	-	1	-	-	1	-	1	-	-	-	-	1	-	-	-	-	-	-	1	-	-	-	-	-	1	-	-	-	-	-	*UAE*
Yemen	1	-	1	-	-	1	-	1	-	-	1	-	1	1	1	-	-	1	1	-	-	-	1	1	1	S	1	-	-	-	1	-	-	-	-	-	*Yemen*
Totals	**27**	**3**	**22**	**7**	**3**	**22**	**0**	**23**	**6**	**5**	**24**	**4**	**27**	**24**	**21**	**0**	**7**	**21**	**10**	**3**	**0**	**0**	**13**	**13**	**28**	**7**	**4**	-	-	**0**	**13**	**11**	**7**	**6**	**7**	**5**	**Totals**

Legend	
1	*Ratified*
-	*Not signed or ratified*
S	*Signed, but not ratified*
*	*The Convention on the Rights of Persons with Disabilities and its Protocol*
**	*The Convention for the Protection of All Persons from Enforced Disappearance entered into force on 23 December 2-1-*
***	*For CRC: OPIC States are signatories only. Optional Protocol has not yet entered into force*
No statutory limit	*Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity*
Kampala Convention	*African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)*
ACtHPR	*Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*
AU Refugee Conv.	*Convention Governing the Specific Aspects of Refugee Problems in Africa*
AU ♀'s Protocol	*Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*

ENDNOTES

[1] IDMC, *Global Report on Internal Displacement* (Geneva: IDMC, 2018), at: http://www.internal-displacement.org/global-report/grid2017/.

[2] Based on official estimates: 1,500,000 Algerians, 195,000 Cypriots (45,000 Turkish, 160,000 Greek under the 1975 Population Exchange Agreement), 3,300,000 Iraqis, 20,000 Lebanese, 543,844 Libyans, 7,555,000 Palestinians, 3,300,000 Sudanese, 11,600,000 Syrians, at least 174,000 Western Saharans (equivalent to refugee population, but excluding IDP and other HLP-restitution claimants in the Moroccan-administered zone) and some 3 million Yemenis. Algeria: 1.5 million; Iraq: 3.3 million; Lebanese: 20,000; Libya: 543,844; Palestine: 200,000 IDPs, 5.355 million registered refugees; Sudan: 3.3 million; Syria: 6.6m IDPs + 5m refugees; Western Sahara: 174,000; 3 million in Yemen. Sahrawi refugee population is rounded from 173,600. UNHCR, "Sahrawi Refugees in Tindouf, Algeria: Total In-Camp Population," March 2018, at: http://www.usc.es/export9/sites/webinstitucional/gl/institutos/ceso/descargas/UNHCR_Tindouf-Total-In-Camp-Population_March-2018.pdf.

[3] Including a growing number of handbooks, guidelines, and training modules that the international community continues to develop in response to post-conflict and post-disaster land issues: See Nicolas Pons-Vignon and Henri-Bernard Solignac Lecomte, "Land, violent conflict, and development" OECD Development Centre Working Paper No. 233 (Paris: Organisation for Economic Co-operation and Development [OECD], 2004), at: https://www.oecd.org/dev/29740608.pdf; UN-Habitat, *A post-conflict land administration and peacebuilding Handbook*, Volume 1, "Countries with land records" (Nairobi: UN Habitat, 2007), at: www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=2443; 2010; Babette Wehrmann, *Land conflicts: A practical guide to deal with land disputes* (Eschborn, Germany: GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit, 2008), at: https://www.giz.de/fachexpertise/downloads/Fachexpertise/giz2008-en-land-conflicts.pdf; Inter-agency Standing Committee, *IASC Framework on Durable Solutions for Internally Displaced Persons* (Washington: The Brookings Institution – University of Bern Project on Internal Displacement April 2010), pp. 27–46, at: https://www.brookings.edu/research/iasc-framework-on-durable-solutions-for-internally-displaced-persons-2/ [https://www.brookings.edu/wp-content/uploads/2016/06/04_durable_solutions_arabic.pdf].

[4] Bustenay Oded, *Mass Deportations and Deportees in the Neo-Assyrian Empire* (Wiesbaden: Reichert, 1979); Joseph Schechla, "Ideological roots of population transfer," *Third World Quarterly*, Vol. 14, Issue 2 (June 1993), 239–75.

[5] Joseph Schechla, "Prohibition, Prosecution and Impunity for the Crime of Population Transfer," *al majdal*, Issue No. 49 (spring–summer 2012), pp. 13–17, at: http://www.badil.org/phocadownload/Badil_docs/publications/al-majdal49.pdf.

[6] "Cyrus Cylinder," *Wikipedia*, at: https://en.wikipedia.org/wiki/Cyrus_Cylinder.

[7] His *Zāhir al-Riwāya*, include *al-Mabsūt*, *al-Jam`i al-Kabīr*, *al-Jami` al-Saghīr*, *al-Siyār al-Kabīr*, *al-Siyār al-Saghīr*, and *al-Ziyādāt Kitāb*; Muhammad Hasan Ismaʻīl al-Shāfiʻi, ed., *Abu Bakr Muhammad b. Ahmad b. Abi Sahl al-Sarakhsi, al-Mabsūt*, Vol. 10 (Beirut: Dar al-Kutub al-'Ilmiyyah, 1997); al- Shaybānī, Abū ʿAbd Allāh Muḥammad b. al-Ḥasan b. Farḳad," *Encyclopaedia of Islam*; Majid Khadduri, *The Islamic Law of Nations: Shaybani's Siyar* (Baltimore: Johns Hopkins University Press, 2001); John Kelsay, "Al-Shaybani and the Islamic Law of War," *Journal of Military Ethics*, Vol. 2, No. 1 (March 2003), pp. 63–75; Sadia Tabassum, "Combatants, not bandits: the status of rebels in Islamic law," *International Review of the Red Cross*, No. 93, No. 881 (March 2011), pp. 121–139, at: https://www.icrc.org/spa/assets/files/review/2011/irrc-881-tabassum.pdf; Banham Sadeghi, "The Authenticity of Early Ḥanafī Texts: Two Books of al-Shaybānī," in *The Logic of Law Making in Islam: Women and Prayer in the Legal Tradition*, Cambridge Studies in Islamic Civilization, pp. 177–200 (Cambridge: Cambridge University Press, 2013).

[8] Hugonis Grotii, *De jure belli ac pacis* ([*On the Law of War and Peace*]; Philip Christiaan Molhuysen, *Hugonis Grotii. De iure belli ac pacis. Libri tres, in quibus ius naturae et gentium, item iuris publici praecipua explicantur: cum annotatis auctoris* [in Latin] (Clark NJ: The Lawbook Exchange, Ltd., 2005), at: https://books.google.com/books?id=TgfoMoulW4QC&printsec=frontcover; Stephen C. Neff, ed., *"Prologue," Hugo Grotius,. On the Law of War and Peace* (Cambridge: Cambridge University Press, 2012).

[9] As recorded in Abu Zaid `Abd al-Rahmān ibn Muhammad ibn Khaldūn al-Hadhrami, *Kitāb al-I`bar* (*The Book of Admonitions* or *Book of Precepts*, also often referred to as the *Universal History);* Ibn Khaldūn, *Tārīkh Ibn Khaldūn* (Beirut: *Dār al-Kutub al-'Ilmīyya*, 2010), ed. Adel ibn Sa'd, Vol. 7, pp. 543–552; Ibn Khaldūn, *Rihlah Ibn Khaldūn* (Beirut: *Dār al-Kutub al-'Ilmīyya*, 2019), ed. Muhammad al-Tanji, pp. 286–299; Walter J. Fischel, trans. And ed., *Ibn Khaldun and Tamerlane: Their Historic Meeting in Damascus, 1401 A.D. (803 A.H.)* (Berkeley and Los Angeles: University of California Press, 1952); Mohamad Ballan, "The Scholar and the Sultan: A Translation of the Historic Encounter between Ibn Khaldun and Timur" (2014), at: https://ballandalus.wordpress.com/2014/08/30/the-scholar-and-the-sultan-a-translation-of-the-historic-encounter-between-ibn-khaldun-and-timur/.

[10] UNHCR, *The State of the World's Refugees: A Humanitarian Agenda* (Geneva: UNHCR, 1999), p. 146, at: http://www.unhcr.org/3eb78b3e4.pdf.

[11] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2006, para. 19, at: http://www.un.org/Docs/asp/ws.asp?m=A/RES/60/147.

[12] *Housing and Property Restitution for Refugees and Displaced Persons Implementing the 'Pinheiro Principles'* (Geneva: FAO, IDMC, OCHA, OHCHR, UN-Habitat and UNHCR, March 2007), at: https://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf.

[13] UN Commission on Human Rights, "forced eviction," resolution 1993/77, 10 March 1993, at: http://www.hlrn.org/img/documents/ECN4199377%20en.pdf; and "Prohibition of forced evictions," resolution 2004/28, 16 April 2004, para. 1, at: http://www.hlrn.org/img/documents/E-CN_4-RES-2004-28.pdf.

[14] Avalon Project, *Nuremberg Trial Proceedings*, Vol. 1, "Indictment: Count Three-War Crimes"; "Count Four-Crimes against Humanity," at: http://avalon.law.yale.edu/subject_menus/imt.asp; The Tokyo War Crimes Trial Digital Collection, University of Virginia School of Law, at: http://imtfe.law.virginia.edu/.

[15] Rome Statute of the International Criminal Court, 17 July 1998, Article 7: Crimes against Humanity and Article 8: War Crimes, at: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-10&chapter=18&lang=en.

[16] Statute of the International Military Tribunals (1945), Rome Statute (1998), Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968).

[17] Yael Danieli, "Reappraising the Nuremberg Trials and their Legacy: the Role of Victims in International Law," *Cardozo Law Review*, Vol. 27, No. 4 (February 2006).

[18] Niels Harild, Asger Christensen and Roger Zetter, *Sustainable Refugee Return: Triggers, constraints, and lessons on addressing the development challenges of forced displacement* (Washington: World Bank Group, August 2015), Annex 2: Voluntary migration, forced displacement and development, at: https://openknowledge.worldbank.org/handle/10986/22751.

[19] See the concept of such policy coherence in Framework for Action for Food Security and Nutrition in Protracted Crises, CFS 2015/42/4, 15 October 2015, para. 16, at: http://www.fao.org/3/a-bc852e.pdf; and Commitments to Action, World Humanitarian Summit, 23–25 May 2016, Core Responsibility 3: Leave No One Behind, A. Reduce and address displacement, at: https://www.worldhumanitariansummit.org/sites/default/files/media/WHS%20Commitment%20to%20Action_8September2016.pdf; Urban displacement and development: moving the debate forward (conference report), Ministry of Foreign Affairs, Denmark, 7–8 February 2013, at: https://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/events-documents/4984.pdf.

[20] Volker Türk and Madeline Garlick, "From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees," International Journal of Refugee Law, Volume 28, Issue 4, 1 December 2016, Pages 656–678, https://doi.org/10.1093/ijrl/eew043; *International Responsibility, Protection and Displacement: Exploring the Connections between R2P, Refugees and Internally Displaced Persons*; *One Humanity, Shared Responsibility*, Report of the United Nations Secretary-General for the World Humanitarian Summit, at; http://sgreport.worldhumanitariansummit.org/; New York Declaration for Refugees and Migrants, A/RES/71/1; Robin Newnham and Mariam Jemila Zahari, "Financial Regulators and the Global Forced Displacement Crisis: a Shared Responsibility," at: https://www.afi-global.org/blog/2017/06/financial-regulators-and-global-forced-displacement-crisis-shared-responsibility; "Global Framework on Responsibility Sharing for Refugees – What Will It Take?", speech by Andreas Kamm, Secretary General at the Danish Refugee Council at side event on Responsibility Sharing at the World Humanitarian Summit, May 2016, at: https://drc.dk/media/2485765/global-responsibility-sharing.pdf.

[21] http://au.int/en/content/african-union-convention-protection-and-assistance-internally-displaced-persons-africa.

[22] This bias is echoed by practitioners in other contexts. Cofounder and then Secretary General of the Middle East Council of Churches Gabriel Habib responded to a BBC reporter who asked about God's choice in the war in the Persian Gulf. "God," said Dr. Habib, "is on the side of the suffering." Donald Shriver, "For Those Who Wonder Which Side God Is On," *The New York Times* (3 March 1991), at: http://www.nytimes.com/1991/03/03/opinion/l-for-those-who-wonder-which-side-god-is-on-281991.htm. Veteran journalists Robert Fisk reportedly advised his colleagues reporting on the Middle East that, to cover it, "we must be neutral and unbiased on the side of those who suffer." Crawford Kilian, "Is Robert Fisk Today's Orwell?" *The Tyee* (5 February 2013), at: http://thetyee.ca/Mediacheck/2013/02/05/Robert-Fisk/

[23] First use of the term is cited in United States Air Force, "USAF Intelligence Targeting Guide—AIR FORCE PAMPHLET 14–210 Intelligence," 1 February 1998, p. 180, at: https://fas.org/irp/doddir/usaf/afpam14-210/part20.htm#page180.

[24] Michael Schwartz, "Neo-liberalism on crack: Cities under siege in Iraq," *City*, Vol. 11, No. 1 (April 2007), at: http://www.hic-mena.org/documents/Schwartz%20Neolib%20on%20Crack.pdf; Matthew William Flannes, "Neoliberalism, Creative Destruction and the Economic Reconstruction of Iraq, 2003-2010," University of Arizona thesis, at: https://repository.arizona.edu/handle/10150/144372?show=full; HLRN, *Restoring Values*, *op. cit.*; HLRN,

Wikileaks, *Housing Rights and Afghanistan: Documenting Housing and Land Rights Violation as War Crimes* (Cairo: HLRN, 20011), at: http://www.hlrn.org/img/documents/War_crimes_in_Afghanistan_final.pdf.

[25] First International Conference of American States, held in Washington, D.C., from October 1889 to April 1890, Article 1, reaffirmed in Inter-American Reciprocal Assistance and Solidarity (Act of Chapultepec), resolution approved by the Inter-American Conference on Problems of War and Peace, Mexico City, 6 March 1945, entered into force 8 March 1945, 60 Stat. 1831, Treaties and Other International Acts Series, 1543; League of Nations resolution on Japanese aggression in China (1932); Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, Article 49, at: https://ihl-databases.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5; International Law Commission (ILC), "Report of the International Law Commission on its forty-third session, 1991," *Official Records of the General Assembly*, Supplement No. 10, A/46/10, 19 July 1991, Article 22 and commentary, pp. 104–07, at: http://legal.un.org/ilc/documentation/english/reports/a_46_10.pdf; Committee on Economic, Social and Cultural Rights (CESCR), GC No. 7: forced eviction, 20 May 1997, para. 5, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en. See also Ian Brownlie, *International Law and the Use of Force by States* (London: Clarendon Press, 1963); Aun Shawkat al-Khasawneh and Ribot Hatano. "The human rights dimensions of population transfer, including the implantation of settlers," E/CN.4/Sub.2/1993/17, 6 July 1993, at: http://www.refworld.org/docid/3b00f4194.html; إبعاد حقوق الانسان اللتي تنطوي عليها نقل السكان، بما في ذالك التوطين والمستوطنين; Claire Palley, "Population Transfer," in Donna Gomien, ed., *Broadening the Frontiers of Human Rights: Essays in Honour of Asbjørn Eide* (Oslo: Scandinavian University Press, 1992; New York: Oxford University Press, 1993), 219–54, and "Population Transfer and International Law," paper delivered at "UNPO Conference on Population Transfer," Tallinn, Estonia, 11–13 January 1992), at: http://unpo.org/downloads/Population-Transfer-1992.pdf; Schechla (2012), *op. cit.*, pp. 13–17; UN Office of the High Commissioner for Human Rights (OHCHR), *Forced Evictions*, Fact sheet No. 25, Rev. 1 (Geneva: OHCHR, 2014), pp. 4, 11–12, at: http://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf.

[26] Rex Brynen and Roula El-Rifai, ed. *Compensation to Palestinian Refugees and the Search for Palestinian-Israeli Peace* (Chicago: University of Chicago Press, 2013); Michael R. Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict* (New York: Columbia University Press, 2003); Leila Hilal, "Reparation for Lost Palestinian Property inside Israel: A review of international developments," *Journal of Palestine Studies* , Issue. 33 (winter 2008), at: http://www.palestine-studies.org/jq/abstract/77886; Atif Kubursi, "Palestinian Losses in 1948, Compensation Valuations and Israel's Ability to Pay" (London: Adam Smith International Ltd., April 2008), at: http://www.ajtransparency.com/files/2459.pdf; Thierry J. Senechal, *Valuation of Palestinian Refugee Losses: A Study Based on the National Wealth of Palestine in 1948* (Ramallah: Negotiations Support Unit, Negotiations Affairs Department of the PLO/Palestinian Authority, 18 May 2008), at: http://www.ajtransparency.com/files/2767.pdf.

[27] Joseph Schechla, "Cyprus Property Claims and Judgments," in *The Land and Its People: Civil Society Voices Address the Crisis over Natural Resources in the Middle East/North Africa* (Cairo: HLRN, 2015), pp. 243–50, at: http://www.hlrn.org/img/publications/BigMasterFinal.pdf; Rhodri C. Williams, "Note on ECtHR Decision in *Demopoulos v. Turkey*," *Terra Nullius* (20 October 2010), at: https://terra0nullius.wordpress.com/2010/10/20/note-on-ecthr-decision-in-demopoulos-v-turkey/.

[28] UNHCR, "Sahrawi Refugees in Tindouf, Algeria: Total In-Camp Population," March 2018, at: http://www.usc.es/export9/sites/webinstitucional/gl/institutos/ceso/descargas/UNHCR_Tindouf-Total-In-Camp-Population_March-2018.pdf.

[29] "Iraq to resume paying war reparations to Kuwait in 2018," *Arabian Business* (25 November 2017), at: https://www.arabianbusiness.com/politics-economics/384322-iraq-to-resume-paying-war-reparations-to-kuwait-in-2018; Thirty-Eighth Report of the Executive Secretary Pursuant to Article 41 of the Provisional Rules for Claims Procedure, S/AC.26/2007/2, 22 June 2007, at: http://www.uncc.ch/sites/default/files/attachments/documents/art41_38.pdf.

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

[31] Reinoud Leenders, *Spoils of Truce: Corruption and State-Building in Postwar Lebanon* (Ithaca NY: Cornell University Press, 2012); Georges Assaf and Rana El-Fil, "Resolving the issue of war displacement in Lebanon," *Forced Migration Review*, Vol 7 (7 April 2000, pp. 31–33, at: http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR07/fmr7.10.pdf; Mohamed Nazzal, "The Untouchable Looters of the Lebanese Displaced," *al-akhbar english* (28 July 2012), at: http://english.al-akhbar.com/node/10413; Dalila Mahdawi, "Corruption exacerbates plight of internally displaced," *The Daily Star* (30 September 2009), at:

http://www.dailystar.com.lb/News/Lebanon-News/2009/Sep-30/55630-report-corruption-exacerbates-plight-of-internally-displaced.ashx.

[32] Rex Brynen and Roula El-Rifai, eds., *Compensation to Palestinian Refugees and the Search for Palestinian-Israeli Peace* (London: Pluto Press, 2013); Leila Hilal, "Reparation for Lost Palestinian Property inside Israel: A review of international developments," Issue 33 (2008), at: http://www.palestine-studies.org/jq/fulltext/77886; Terry Rempel, "Dispossession and Restitution in 1948 Jerusalem," *Jerusalem 1948* (Bethlehem: BADIL, 2011), http://badil.org/phocadownload/Badil_docs/publications/Jerusalem1948-CHAP7.PDF.

[33] Between January 2014 and August 2015, IOM tracked 3,171,606 internally displaced persons (IDPs) dispersed across 103 districts and 3,522 distinct locations in Iraq, including an estimated 875,562 individuals in the Kurdistan Region of Iraq (KRI) alone (28% of the overall displaced population). IOM Displacement Tracking Matrix Round XXVI - August 2015, available at http://iomiraq.net/dtm-page.

[34] Israel. Absentee Property Law 5710-1950, 15 March 1950, at: https://unispal.un.org/DPA/DPR/unispal.nsf/0/E0B719E95E3B494885256F9A005AB90A. Under ISIL, "Militants go from house to house asking for documents to prove that the person there is the legal full-time occupant. If they suspect that the real owners have fled they are given ten days to return; if they don't come back, their house is confiscated without compensation and given to somebody more loyal to ISIL… This sort of threat is one of the ways ISIL ensures that its new state doesn't become depopulated." Patrick Cockburn, "If only they would leave: Patrick Cockburn reports from Northern Iraq," *London Review of Books* (18 December 2014), at: http://www.lrb.co.uk/v36/n24/patrick-cockburn/if-only-they-would-leave; "Systematic Housing and Land Rights Violations against Syrian Kurds," HLRN Submission to UPR of Syria, 2009, at: http://www.hlrn.org/img/documents/kurds%20status%20in%20Syria.pdf; Jahn, *op. cit.,* p. 34.

[35] Simon Reynolds, *Coercive Environment: Israel's Forcible Transfer of Palestinians in the Occupied Territory* (Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, February 2017), at: https://badil.org/phocadownloadpap/badil-new/publications/research/working-papers/FT-Coercive-Environments.pdf.

[36] International Organisation for Migration (IOM), Housing, Land and Property (HLP) Issues facing Returnees in Retaken Areas of Iraq: A Preliminary Assessment (Geneva: IOM, September 2016), p. 8, at: https://www.iom.int/sites/default/files/our_work/DOE/LPR/Hijra-Amina-HLP-return-assessment.pdf.

[37] See Committee on World Food Security (CFS), "Framework for Action for food Security and Nutrition in Protracted Crises," 13 October 2015, at: http://www.fao.org/3/a-bc852e.pdf; and United Cities and Local Governments, "Mechelen Declaration on Cities and Migration," 16 November 2017, looks toward the development of the Global Compact on Safe, Orderly and Regular Migration to provide "a unifying framework of common principles, commitments and understandings among Member States on all aspects of international migration, including the humanitarian, recovery, development and human rights-related dimensions," para. 9, at: https://www.iom.int/sites/default/files/press_release/file/Mechelen-Declaration-final.pdf; OECD, *Policy Coherence for Sustainable Development 2017: Eradicating Poverty and Promoting Prosperity* (Paris: OECD Publishing, 2017), at: http://www.oecd.org/publications/policy-coherence-for-sustainable-development-2017-9789264272576-en.htm.

[38] New York Declaration for Refugees and Migrants, A/RES/71/1, 3 October 2016, para. 7, 11, 68, 73 and Annex, at: http://www.un.org/en/development/desa/population/migration/generalassembly/docs/A_RES_71_1_E.pdf; "What are the real causes of the global refugee crisis?" *World Economic Forum*, 27 April 2015, at: https://www.weforum.org/agenda/2015/04/what-are-the-real-causes-of-the-global-refugee-crisis/; UNHCR, "Global Responsibility Sharing through Pathways for Admission of Syrian Refugees," (undated), at: http://www.unhcr.org/56f29f579.pdf; Ban-Ki Moon, "UN Secretary-General's remarks at Opening of High-level meeting on Global Responsibility Sharing for Syrian Refugees" [as delivered], 30 March 2016, at: https://www.un.org/sg/en/content/sg/statement/2016-03-30/un-secretary-generals-remarks-opening-high-level-meeting-global; Kamm, *op. cit.*

[39] International Covenant on Civil and Political Rights (ICCPR), in Article 50, and the International Covenant of Economic, Social and Cultural Rights (ICESCR), Article 28, each stipulate that: "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions." International Law Commission has confirmed that the conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State." Draft articles on Responsibility of States for internationally wrongful acts, A/56/10 (2001), at: http://www.un.org/documents/ga/docs/56/a5610.pdf; and Commentaries, at: http://www.eydner.org/dokumente/darsiwa_comm_e.pdf.

[40] HLRN and Amel Association, *Right to the City in Greater Beirut: Context Assessment in Light of the Refugee and Displacement Crisis* (Cairo: HLRN, 2018), at: http://www.hlrn.org/img/documents/Assessment_FINAL_EN_web.pdf. [AR: الحق في المدينة في بيروت الكبرى: تقييم السياق في ضوء أزمة اللاجئين والنازحين http://www.hlrn.org/img/publications/Assessment_FINAL_AR.pdf]

[41] UN Commission on Human Rights, "Guiding Principles on Internal Displacement" (*IDP Guiding Principles*) E/CN.4/1998/53/Add.2, 11 February 1998), at: http://www.un-documents.net/gpid.htm.

[42] A/HRC/4/18, 5 February 2007, paras. 42, 60–63);

[43] "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," A/RES/60/147, 21 March 2006, at: http://www2.ohchr.org/english/law/remedy.htm.

[44] Ethnic cleansing does not have a legal definition. However, the term has been used in numerous legal texts, including UN documents. A UN Commission of Experts on grave breaches and other violations of international humanitarian law in the former Yugoslavia defined the practice as "rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area. `Ethnic cleansing' is contrary to international law." Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), para. 55.

In 1992, the UN UNGA categorized "ethnic cleansing," as then underway in Yugoslavia, as "a form of genocide." "The situation in Bosnia-Herzegovina," UNGA resolution A/RES/47/121, adopted at the 91st plenary meeting, 18 December 1992.

Broader definitions identify eviction or expulsion on the basis of ethnic criteria. Some narrower definitions add specific characteristics, including the "systematic" or "illegal" nature of the evictions/expulsions, involving gross violations of human rights or grave breaches of international humanitarian law, or describe their context of an ongoing internal or international war, and/or deliberate policy. For example, One author defines ethnic cleansing such that, "At one end, it is virtually indistinguishable from forced emigration and population exchange while at the other it merges with deportation and genocide. At the most general level, however, ethnic cleansing can be understood as the expulsion of an 'undesirable' population from a given territory due to religious or ethnic discrimination, political, strategic or ideological considerations, or a combination of these." Andrew Bell-Fialkoff, "A Brief History of Ethnic Cleansing," *Foreign Affairs*, Vol. 72, No. 3 (summer 1993), at: http://www.foreignaffairs.org/19930601faessay5199/andrew-bell-fialkoff/a-brief-history-of-ethnic-cleansing.html.

Another author characterizes ethnic cleansing is: "a well-defined policy of a particular group of persons…systematically [to] eliminate another group from a given territory on the basis of religious, ethnic or national origin. Such a policy involves violence and is very often connected with military operations. It is to be achieved by all possible means, from discrimination to extermination, and entails violations of human rights and international humanitarian law." Drazen Petrovic, "Ethnic Cleansing - An Attempt at Methodology," European Journal of International Law, Vol. No. 3, pp. 342–60, at 352, and quoted in quoted by Ilan Pappe, The Ethnic Cleansing of Palestine" (Oxford: Oneworld Publications, 2006), p.1.

[45] "The human rights dimensions of population transfer, including the implantation of settlers," E/CN.4/Sub.2/1993/17, 6 July 1993, at: http://www.refworld.org/docid/3b00f4194.html.
إبعاد حقوق الانسان التي تنطوي عليها نقل السكان، بما في ذالك التوطين والمستوطنين
http://www.hlrn.org/img/documents/ECN4Sub2199317%20ar.pdf

[46] Report of the International Law Commission on its forty third session, 1991, Official Records of the General Assembly, Supplement No. 10 (A/46/10), p. 271..

[47] These include such organisations as the Centre on Housing Rights and Evictions, Displacement Solutions, Habitat International Coalition's Housing and Land Rights Network and the NRC's Information, Counselling and Legal Assistance (ICLA) program.

[48] See OHCHR, *Human Rights Training: A Manual on Human Rights Training Methodology*, at: http://www.ohchr.org/Documents/Publications/training6en.pdf [Arabic: http://www.ohchr.org/Documents/Publications/training6ar.pdf] and, more generally, the OHCHR Professional Training Series, at: http://www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducationtwo.aspx.

[49] See post-WWI "option agreements" between and among Turkey, Greece and Bulgaria…Nuremberg and Tokyo Trial focused exclusively on prosecutions and omitted victims, while the Austreibung of German civilians after WWII was an imposition of the Allied Powers, not subject to a negotiated or judicial process.

[50] Bosnia-Herzegovina, Cambodia, El Salvador, Eritrea, Ethiopia, Guatemala, Kosovo, Liberia, Mali, Mozambique, Nepal, Rwanda, Sierra Leone, Sudan and Tajikistan.

[51] Victoria Holt and Glyn Taylor, with Max Kelly, "Protecting Civilians in the Context of UN Peacekeeping Operations: Successes, Setbacks and Remaining Challenges" (New York: Department of Peacekeeping Operations and the Office for the Coordination of Humanitarian Affairs, 2009), p. 192, at: http://reliefweb.int/sites/reliefweb.int/files/resources/B752FF2063E282B085257671007 51B90-unocha_protecting_nov2009.pdf.

[52] *The Challenges of Peacekeeping in Darfur* (International Refugee Rights Initiative, 2014), p. 26, at: http://www.refugee-rights.org/Publications/Papers/2016/UNAMID%20FINAL.pdf.

[53] C.f.: Norman Finkelstein, *The Holocaust Industry: Reflections on the Exploitation of Jewish Suffering* (London: Verso Books, 2000).

[54] Joseph Schechla, "Lands of the Arab spring," *Digital Development Debates*, Issue 20 (2012), at: http://www.digital-development-debates.org/issue-10-hunger--for-resources--lands-of-the-arab-spring.html.

[55] Draft Libyan Constitution, version dated 29 July 2017, at: http://www.constitutionnet.org/vl/item/draft-constitution-libya-29-july-2017 .

[56] International Crisis Group, « Les terres de la discorde (II): restitution et réconciliation au Burundi, February 2014, at: https://d2071andvip0wj.cloudfront.net/fields-of-bitterness-II-restitution-and-reconciliation-in-burundi-french.pdf.

[57] An institution, in the broad sense, could be any established relationship, practice, organization and/or structure with the effect or purpose of bonding and bridging parties in habitual function. An "institution," in that sense, involves the rules of the game under which formal and informal activity is conducted, and includes public and private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglass C. North, institutions are "humanly devised constraints that shape human interaction." Douglass C. North, "Institutions," The Journal of Economic Perspectives, Vol. 5, No. 1 (winter, 1991), pp. 97–112, at: https://campus.fsu.edu/bbcswebdav/orgs/econ_office_org/Institutions_Reading_List/02._Institutional_Quality_and_Growth/North,_D._C._Institutions.

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[69] "Transforming our world: the 2030 Agenda for Sustainable Development," A/RES/70/1, 21 October 2015, para. 35, at: https://sustainabledevelopment.un.org/post2015/transformingourworld.

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[71] CESCR, GC No. 7: The right to adequate housing (Art.11.1): forced evictions, 20 May 1997, paras. 15–16, contained in document E/1998/22, annex IV, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en.

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[135] Common Article 1 of ICCPR and ICESCR, 10 December 1966.

[136] Human Rights Committee, GC No. 12: Article 1 (Right to Self-determination), The Right to Self-determination of Peoples, 13 March 1984, para. 5, at: http://www.refworld.org/docid/453883f822.html.

[137] Articles 1.2 and 55.

[138] African [Banjul] Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* 21 October 1986.

[139] League of Arab States, *ACHR*, 22May 2004, entered into force 15March 2008,reprinted in *International Human Rights Reports*, Vol. 12, No. 893 (2005), at: http://hrlibrary.umn.edu/instree/loas2005.html. As of November 2013, ACHR has been ratified by Algeria, Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Palestine, Qatar, Saudi Arabia, Syria, the UAE and Yemen. (The League of Arab States suspended Syria's membership in 2011.)

[140] ICJ, *Case Concerning East Timor* (*Portugal V. Australia*) Judgment, General List No. 84, 22 February 1991, para. 29, at: http://www.icj-cij.org/files/case-related/84/084-19950630-JUD-01-00-EN.pdf; ICJ, *Western Sahara Case*, Advisory Opinion (1975) *ICJ Reports* 12, 16 October 1975, 25–26, at: http://www.icj-cij.org/files/case-related/61/061-19751016-ADV-01-00-EN.pdf; *Legal Consequences for States of the Continued Presence of South Africa in Namibia* (South West Africa), 21 June 1971, *ICJ Reports* 16, para. 126, at: http://www.icj-cij.org/files/case-related/53/053-19710621-ADV-01-00-EN.pdf; Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, A/RES/25/2625, 24 October 1970, annex, fifth principle, at: http://www.un-documents.net/a25r2625.htm.

[141] ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, General List No. 131, 9 July 2004, at: http://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf; Curtis Doebbler, "Human Rights and Palestine: The Right to Self-Determination in Legal and Historical Perspective," *Beijing Law Review*, Vol. 2 No. 3 (2011), at: https://heinonline.org/HOL/LandingPage?handle=hein.journals/beijlar2&div=18&id=&page=; John Quigley, *The Statehood of Palestine: International Law in the Middle East Conflict* (New York: Cambridge University Press, 2010).

[142] CCPR, GC No. 12 - Article 1 (The right to self-determination of peoples), 12 April 1984, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6626&Lang=en; HLRN, *Restoring Values: Institutional Challenges to Providing Restitution and Compensation for Iraqi Housing and Land Rights Victims* (Cairo: HLRN, 2005), at: http://www.hlrn.org/publication_det.php?id=q2o=.

[143] An institution, in the broad sense, could be any established relationship, practice, organization and/or structure with the effect or purpose of bonding and bridging parties in habitual function. An "institution," in that sense, involves the rules of the game under which formal and informal activity is conducted, and includes public and private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglass C. North, institutions are "humanly devised constraints that shape human interaction." Douglass C. North, "Institutions," The Journal of Economic Perspectives, Vol. 5, No. 1 (winter, 1991), pp. 97–112, at: https://campus.fsu.edu/bbcswebdav/orgs/econ_office_org/Institutions_Reading_List/02._Institutional_Quality_and_Growth/North,_D._C.-_Institutions.

[144] UDHR, Article 21.3, *op. cit.*

[145] Martinez-Cobo, José R. (Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities). Study of the Problem of Discrimination against Indigenous Populations, 30 July 1981, E/CN.4/Sub.2/476; 10 August 1982, E/CN.4/Sub.2/1982/2, 5 August 1983, E/CN.4/Sub.2/1983/21, https://www.un.org/development/desa/indigenouspeoples/publications/2014/09/martinez-cobo-study/.

[146] Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples, 2007, para. 12, at: http://www.achpr.org/files/special-mechanisms/indigenous-populations/un_advisory_opinion_idp_eng.pdf.

[147] Christian Erni, ed., *Shifting Cultivation, Livelihood and Food Security: New and Old Challenges for Indigenous Peoples in Asia* (Bangkok: FAO, International Working Group on Indigenous Affairs and Asia Indigenous Peoples Pact, 2015), at: http://www.fao.org/3/a-i4580e.pdf; International Indian Treaty Council United Nations, "Affirming the Cultural Foundation of Indigenous Peoples' Food and Seed Sovereignty," submission to the Expert Mechanism on the Rights of

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[148] ILO, Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, 1989, at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

[149] The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), A/RES/61/295, 13 September 2007, at: https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

[150] ILO and ACHPR, *Egypt: The Constitutional, Legislative and Administrative Provisions concerning Indigenous Peoples* (ILO and ACHPR, 2009), at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_115929.pdf.

[151] VCLT, op. cit., Article 27.

[152] UDHR, *op. cit.,* Article 8.

[153] ICCPR, *op. cit.,* Article 3(b).

[154] Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, Article 43, at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=3741EAB8E36E9274C12563CD00516894.

[155] Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, Article 53, at: https://ihl-databases.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5.

[156] Declaration, Conference of High Contracting Parties to the Fourth Geneva Convention, 17 December 2014, especially paras. 3–5, at: https://www.un.org/unispal/document/text-of-the-declaration-conference-of-high-contracting-parties-to-the-fourth-geneva-convention-declaration-eng/.

[157] Ibid, Article 1.

[158] Since the Beit El case (High Court of Justice 606, 610/78, *Suleiman Tawfiq Ayyub et al. v. Minister of Defence et al*, Piskei Din 33(2)), the High Court of Justice has ruled that The Hague Regulations (1907) are customary law, therefore, automatically part of municipal law and judiciable in Israel.

[159] Fourth Geneva Convention, *op. cit.,* Article 49 read: "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive….The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."

[161] ICESCR, Article 2.1; Convention on the Rights of the Child, Article 4; Convention on the Rights of Persons with Disabilities, Article 4, paragraph 2.

[162] Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 55, at: http://www.refworld.org/docid/3ae6b3930.html.

[163] See CESCR, GC 15: The right to water, E/C.12/2002/11 (2003), paras. 23, 43–44; GC No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, E/C.12/GC/24, 10 August 2017, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f24&Lang=en.

[164] Notably, the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, 6 June 1986, at: http://www.hlrn.org/img/documents/Limburg%20Principles.pdf; and CESCR GC No. 3, The nature of States parties obligations (Art. 2, par. 1), 1 January 1991, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4758&Lang=en.

[165] Michael M. Cernea, "Risks Analysis and Risk Reduction: IRR: a Theoretical and Operational Model for Population Resettlement," at: http://media-energy.com.np/wp-content/uploads/2015/02/5th5.pdf; Michael M. Cernea and Christopher McDowell, eds., *Risks and Reconstruction: Experiences of Resettlers and Refugees* (Washington: The World Bank, 2002).

[166] CESCR, GC No. 11: Plans of action for primary education (art.14), E/C.12/1999/4, 10 May 1999, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f4&Lang=en; GC No. 13 (Twenty-first session, 1999), The right to education (article 13 of the Covenant), E/C.12/1999/10, 8 December 1999, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f10&Lang=en.

[168] Charter of the United Nations, *op. cit*.

[169] Atle Grahl-Madsen, *The Land Beyond: Collected Essays on Refugee Law and Policy* (The Hague: Martinus Nijhoff, 2001), https://www.researchgate.net/publication/233512889_The_Land_Beyond_Collected_Essays_on_Refugee_Law_and_Policy; http://www.gbv.de/dms/sub-hamburg/327252014.pdf; Gilburt D. Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (Oxford and New York: Oxford University Press, 1993); Eiko R. Thielemann, "Editorial Introduction" and "Towards Refugee Burden-Sharing in the European Union State Interests and Policy Options,"

Journal of Refugee Studies, Vol. 16, Issue 225 (March 2003) Special Issue on European Burden-Sharing and Forced Migration, at: https://academic.oup.com/jrs/issue/16/1 and http://personal.lse.ac.uk/thielema/Papers-PDF/EUSA-2005.pdf; Rüdiger Wolfrum, "International Law of Cooperation," *Max Planck Encyclopedia of Public International Law* (Heidelberg: Max Planck Institute of Public International Law, April 2010; Oxford: Oxford University Press, 2010), at: http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1427?rskey=LEyo3s&result=3&prd=EPIL.

[170] Charter of the United Nations, *op. cit.,* Article 56: "All Members pledge themselves to take joint and separate action in cooperation with the Organization..." to achieve purposes set out in Article 55 of the Charter, including: "... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Charter of the United Nations, 26 June 1945, 59 Stat. 1031, entered into force 24 October 1945.

[171] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. 131 (9 July 2004), paras. 109–112, at: http://www.icj-cij.org/en/case/131.

[172] Article 1.2 provides: "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law…."

[173] Article 2.1 provides: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

[174] Article 11.1 provides: "The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent." Article 11.2 provides: "The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed…"

[175] Article 15.4 provides: "The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields."

[176] Committee on the Rights of the Child (CRC), GC No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights), CRC/C/GC/16, 17 April 2013, paras. 43–44, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f16&Lang=en.

[177] Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011), at: http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23; see also Olivier De Schutter et al., "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights," *Human Rights Quarterly*, Vol. 34 1084 (2012) ("Commentary to Maastricht Principles"), at: https://www.jura.uni-bonn.de/fileadmin/Fachbereich_Rechtswissenschaft/Einrichtungen/Lehrstuehle/Herdegen/de_Wet/SoSe_2016_IWR_und_MR/35_Commentary.Maastricht.pdf.

[178] European Urban Charter, adopted by the Council of Europe's Standing Conference of Local and Regional Authorities of Europe, 18 March 1992, A.18, at: https://wcd.coe.int/ViewDoc.jsp?id=887405.

[179] CESCR, GC. No. 24, *op. cit.*, paras. 25–37.

[180] UN, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, annexed to UNGA resolution 2625 (XXV), 24 October 1970. Wolfrum points out that Western States argued, during the negotiation of the Friendly Relations Declaration, that there was no general legal obligation to cooperate, as the principle was only of a declaratory nature: Wolfrum, *op. cit.*, para 16.

[181] Arts 10 and 14 of the UN Charter refer to UNGA resolutions as 'recommendations', and the International Court of Justice has stressed their advisory nature in numerous cases. However, they may provide evidence of States' views, including on the nature of their legal obligations (opinio juris), which, together with a clearly established pattern of State practice, can become a source of customary international law (see the Statute of the International Court of Justice, art 38(1)(a)–(c). See also art 31(3)(b), VCLT, on "subsequent practice." UNGA resolutions are also seen to provide supplementary means of interpretation of legal instruments, which may assist in determining the content of binding norms. See also art 3, VCLT, *UNTS*, Vol. 1155, No. 331 (23 May 1969).

[182] Ibid., para. 4. While this preambular reference is not part of the operative provisions of the Convention, its importance for the interpretation of the Convention's substantive provisions is widely recognized. The various examples of international cooperation in relation to refugee protection that have occurred over the years since the Convention's entry into force also demonstrate that this has been an important element in State practice. Goodwin-Gill and McAdam note, "a significant level of practical cooperation … exists, even if contributions and political and

moral support for the displaced waver and formal obligations are elusive." G.S. Goodwin-Gill and J McAdam, *The Refugee in International Law* (Oxford and London: Oxford University Press, 3rd edition, 2007), p. 504.

[183] UN Convention relating to the Status of Refugees, 28 July 1951 (hereinafter: Refugee Convention), 189 *UNTS* 137, at: http://www.unhcr.org/1951-refugee-convention.html.

[184] Refugee Convention, *op. cit.*, Article 35(2).

[185] Wolfrum *op. cit.*, para 4. See also Volker Türk, "The UNHCR's role in supervising international protection standards in the context of its mandate" in James C. Simeon, ed., *The UNHCR and the Supervision of International Refugee Law* (Cambridge and London: Cambridge University Press, 2013), p. 39.

[186] N.B.: International Development Association is the part of the World Bank that provides financing for the world's poorest countries. The lending terms are determined with reference to recipient countries' risk of debt distress, the level of GNI per capita, and creditworthiness for the International Bank for Reconstruction and Development (IBRD) borrowing. Recipients with a high risk of debt distress receive 100% of the financial assistance in the form of grants, while those with a medium risk of debt distress receive 50% in the form of grants. Other recipients receive IDA credits on regular or blend and hard-terms with 38-year and 25-year maturities respectively. See IDA lending terms at: http://ida.worldbank.org/financing/ida-lending-terms.

[187] Martin Dawidowicz, "The Obligation of Non-Recognition of an Unlawful Situation," in James Crawford, Alain Pellet and Simon Olleson, eds., Kate Parlett, assistant ed., *The Law of International Responsibility* (Oxford: Oxford University Press, 2010), at: https://prawo.uni.wroc.pl/sites/default/files/students-resources/Non%20recognition.pdf; John Dugard, *Recognition and the United Nations* (Cambridge: Grotius, 1987); Stefan Talmon, "The Duty Not to 'Recognize as Lawful' a Situation Created by the Illegal Use of Force or Other Serious Breaches of a Jus Cogens Obligation: An Obligation without Real Substance?" Chapter IV, at: http://users.ox.ac.uk/~sann2029/6.%20Talmon%2099-126.pdf, in Christian Tomuschat and Jean Marc Thouvenin, eds., *The Fundamental Rules of the International Legal Order: Jus Cogens and Obligations Erga Omnes* (Leiden and Boston: Martinus Nijhoff, 2005); Pierre Klein, "Responsibility for Serious Breaches of Obligations Deriving from Peremptory Norms of International Law and United Nations Law," *European Journal of International Law*, Vol. 13, No. 5 (2002), at: http://ejil.org/pdfs/13/5/1584.pdf; United Nations, "Serious Breaches of Obligations Under Peremptory Norms of General International Law," Chapter III, at: http://legal.un.org/legislativeseries/documents/Book25/Book25_part2_ch3.pdf, in United Nations, *Materials on the Responsibility of States for Internationally Wrongful Acts* (New York: UN, 2013), at: http://www.un-ilibrary.org/international-law-and-justice/materials-on-the-responsibility-of-states-for-internationally-wrongful-acts_1b3062be-en.

[188] Tom Moerenhout, "The Obligation to Withhold from Trading in Order Not to Recognize and Assist Settlements and Their Economic Activity in Occupied Territories," *Journal of International Humanitarian Legal Studies*, Vol. 3, Issue 2 (2014), at: http://booksandjournals.brillonline.com/content/journals/18781527/3/2;

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[216] *Ibid*., Article 16.3.

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[220] Joseph Schechla, "Cyprus Property Claims and Judgments," at: https://www.academia.edu/12820537/Cyprus_Property_Claims_and_Judgments.

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[255] Panmunjom Armistice Agreement (1953), Article III(59)(a), at: http://www.usfk.mil/Portals/105/Documents/SOFA/G_Armistice_Agreement.pdf; and Convention Governing Specific Aspects of Refugee Problems in Africa, Article 5(1), at: http://www.achpr.org/instruments/refugee-convention/.

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

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[259] ACHR, *op. cit.*, Article 27.

[260] See Protocol 4 to the European Convention on Human Rights, Article 3; and the American Convention on Human Rights, Article 22(5).

[261] Palestine – Progress Report of the United Nations Mediator, A/RES/194 (III), 11 December 1948, para. 11, at:

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[264] See UNSC resolution S/RES/745 (1992).

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[267] See UNSC resolution S/RES/1009 (1995).

[268] See UNSC resolutions S/RES/1287 (2000), 1036 (1996), 971 (1995) and 876 (1993).

[269] See UNSC resolutions S/RES/1244 (1999) and 1199 (1998).

[270] See UNSC resolution S/RES/385 (1976).

[271] UNGA resolution 51/114.

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[273] See UNSC resolution S/RES/853 (1993).

[274] See UNSC resolution S/RES/361 (1974).

[275] S/RES/1770, 10 August 2007, at: https://undocs.org/S/RES/1770(2007).

[276] S/RES/687, 3 April 1991, at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/687(1991).

[277] S/RES/2254, 18 December 2015, at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2254.pdf.

[278] See UNSC resolution S/RES/999 (1995).

[279] S/RES/1228, 11 February 1999, at: https://undocs.org/S/RES/1228(1999).

[280] S/RES/2140, 26 February 2014, at: https://www.un.org/press/en/2014/sc11296.doc.htm.

[281] UNGA resolution 1672 (XVI).

[282] UNGA resolution 3212 (XXIX).

[283] UNGA resolutions A/51/126 and 194 (III).

[284] See UNSC resolutions S/RES/361, S/RES/726, S/RES/779 and S/RES/820 A, S/RES/859, S/RES/874, S/RES/896 and 906, S/RES/947, S/RES/993, S/RES/999, S/RES/1036, S/RES/1078, S/RES/1096, S/RES/1124, S/RES/1187, S/RES/1199 and 1203, S/RES/1225, S/RES/1239 and 1244, S/RES/1272; UN UNGA, A/RES/48/116, A/RES/49/10 and A/RES/50/193, A/RES/53/164 and A/RES/54/183.

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[287] Outcome Document of the Durban Review Conference, 24 April 2009, para. 81, at: http://www.un.org/en/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf.

[288] UNHCR Inter-Office Memorandum No. 104/2001 and UNHCR Field Office Memorandum No. 101/2001; UNHCR, *Emergency Handbook*, Overview, Protection risks and Key decision points, in "Shelter Solutions," at: https://emergency.unhcr.org/entry/111688.

[289] Refugee Convention, *op. cit.,* Article 1.A(2).

[290] *IDP Guiding Principles*, *op. cit*., Principle 15(d).

[291] The Agenda was the consensus outcome of Global Consultations of UNHCR and States from 2000 to 2002, endorsed by UNGA in A/AC.96/965/Add.1, 26 June 2002, at: http://www.unhcr.org/excom/excomrep/3d3e61b84/agenda-protection.html; UNHCR, *Agenda for Protection* (Geneva: UNHCR, 3rd ed. 2003), at: http://www.unhcr.org/protection/globalconsult/3e637b194/agenda-protection-third-edition.html. See also Tom Clark James C. Simeon, "UNHCR International Protection Policies 2000–2013: From Cross-Road to Gaps and Responses," *Refugee Survey Quarterly*, Vol. 33, Issue 3 (1 September 2014), at: https://doi.org/10.1093/rsq/hdu011.

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26) أيلول 2017)، على: http://www.aljazeera.net/programs/opposite-direction/2017/9/26/%D9%85%D8%B1%D8%AD%D9%84%D8%A9-%D8%A7%D9%86%D8%AA%D9%82%D8%A7%D9%84%D9%8A%D8%A9-%D9%81%D9%8A-%D8%B3%D9%88%D8%B1%D9%8A%D8%A7-%D8%A3%D9%85-%D8%A7%D9%86%D8%AA%D9%82%D8%A7%D9%85%D9%8A%D8%A9.

[293] See UN Secretary-General, Report on Cambodia, Report on the situation in Tajikistan and Report concerning the situation in Abkhazia, Georgia; Special Representative of the UN Secretary-General on Internally Displaced Persons, Report on visit to Mozambique.

[294] Rule 159. Amnesty: "At the end of hostilities, the authorities in power must endeavour to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes." See *Customary IHL*, at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule159.

[295] Rule 88. Non-discrimination: "Adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited." See *Customary IHL*, "Rule 88. Non-discrimination," at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule88.

[296] Convention Governing Refugee Problems in Africa, Article 5; *IDP Guiding Principles*, *op. cit.*, Principle 29(1); UNHCR Executive Committee, Conclusion No. 18 (XXXI): Voluntary Repatriation.

[297] See, for example, Quadripartite Agreement on Georgian Refugees and Internally Displaced Persons, para. 3(a); Cotonou Agreement on Liberia, Article 18(2); General Peace Agreement for Mozambique; Agreement on Refugees and Displaced Persons annexed to the Dayton Accords, Articles I and II; Agreement of the Joint Working Group on Operational Procedures of Return; Sarajevo Declaration on Humanitarian Treatment of Displaced Persons.

[298] Colombia, Law on Internally Displaced Persons; Afghanistan, Letters addressed to the UN Secretary-General and to the President of the UNSC.

[299] Statement by the President of the UNSC; UN Secretary-General, Further report on the situation of human rights in Croatia; International Conference on Central American Refugees (CIREFCA), Concerted Plan of Action.

[300] The land of Palestine subject to restitution is calculated as the 93% of the land area 20,770 km^2 (2,077,000 ha) claimed by Israel as acquired from Palestine refugees and other indigenous tenure holders (1,931,610 ha), in addition to 36.6% of the 6,220 km^2 (622,000 ha) in the oPt controlled by settler colonies = 2,699,000 ha. In Western Sahara, 80% of the total land area 26,600,000 (21,280,000 ha) remains under foreign administration and subject to restitution to Sahrawis individually or collectively. In Libya, of the approximately 75,000 properties confiscated under Law No. 4, 25,000 claims submitted until 2011, to which the post-2011 dispossessions would be added. The HLP subject to restitution for Syria's estimated 6.6 million IDPs and 5 million refugees remains subject to quantification.

[301] *Supra*, note 2.

[302] A/RES/60/147, *op. cit.*, para. 19.

[303] See UNHCR Global Consultations on International Protection, "Voluntary repatriation," EC/GC/02/5 (25 April 2002), para. 23.

[304] UN Commission on Human Rights, Res. 1996/71 (ibid., § 926) and Res. 1998/26

[305] UN Commission on Human Rights, Res. 1996/71.

[306] UN Sub-Commission on Human Rights, Housing and property restitution in the context of the return of refugees and internally displaced persons, 1998/26, 26 August 1998, at: http://www.refworld.org/docid/3dda64517.html.

[307] Chapter 38. Displacement and Displaced Persons, in ICRC, *Customary International Humanitarian Law*, at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha.

[308] "The Ministry of Displaced and BBAC Sign the 'Loan of the Displaced' Protocol," *Bank of Beirut and the Arab Countries* (6 November 2010), at: https://www.bbacbank.com/newsroom/press-releases/ministry-displaced-and-bbac-sign-%E2%80%9Cloan-displaced%E2%80%9D-protocol.

[309] *Summer War on Habitat in Lebanon*, *op. cit.*, pp. 77–78; "Prefabricated Housing Units Manufacturer Begins Rebuilding Facilities," *Daily Star* (25 September 2006). http://www.rebuildlebanon.gov.lb/english/f/NewsArticle.asp?CNewsID=381. See Dalal Steel Co. prefab house specifications at: http://www.dalalsteel.com/item-list.php?cid=8; Lebanese Economy Minister Sami Haddad said the most urgent need was 10,000 *prefabricated* houses for families whose homes were destroyed by Israeli bombing. See "Donors pledge more than $940 million for Lebanon," 1 September 2006, at: http://www.lebanonundersiege.gov.lb/english/f/eNews/NewsArticle.asp?CNewsID=261. See also Stefan Sperl, Khassim Diagne and David Snider, "Real-time evaluation of UNHCR's response to the emergency in Lebanon and Syria, July–September 2006" (October 2006), p. 14, at: http://www.unhcr.org/research/RESEARCH/4540a9782.pdf.

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[311] Paul Salem, "The Future of Lebanon," Foreign Affairs Vol. 85, No. 6 (November/December 2006); Annie Davies, "Restitution of Land and Property Rights," Forced Migration Review (September 2004); *Post-Tsunami Relief and Rehabilitation: A Violation of Human Rights*, Fact-finding Report No.8 [mission to tsunami-affected areas of Tamil Nadu, India, and Sri Lanka] (New Delhi: HIC-HLRN, South Asia Regional Programme—SARP, 2005); also *Tsunami Response: A Human Rights Assessment* (New Delhi: ActionAid International / HIC-HLRN South Asian Regional Programme / Peoples Movement for Human Rights Learning, 2005); Shivani Chaudry and Enakshi Thukral Ganguly, *Battered Islands: A Report of a Fact-finding Mission to the Tsunami-affected Areas of the Andaman and Nicobar Islands* (New Delhi: HIC-HLRN, 2006).

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[313] "Syria's new property law could obstruct return of refugees and cover up Assad's war crimes," *YaLIBNAN* (27 May 2018), at: http://yalibnan.com/2018/05/27/syrias-property-law-could-obstruct-the-return-of-refugees-and-cover-up-assads-war-crimes/.

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[316] *Ibid.*, Article 27.

[317] Wolfgang Petritsch,"The Future of Bosnia lies with its People," *Wall Street Journal* Europe (17 September 1999), at: http://www.ohr.int/?p=57971; Christian Schwarz-Schilling, "Bosnia Run by the Bosnians," *Wall Street Journal* (12 February 2007), at: http://www.ohr.int/?p=39890.

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[326] Brookings Institute and University of Bern, "Protecting Internally Displaced Persons: A Manual for Law and Policymakers," October 2008, at: http://www.unhcr.org/50f955599.pdf, p. 158. "From Crisis to Catastrophe: the situation of minorities in Iraq," Minority Rights Group International (October 2014), at: http://www.minorityrights.org/download.php@id=1468. See also HLRN EvIA tool, *op. cit.* "Baseline Survey."

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University), p. 20, at: https://www.universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/instituut-voor-metajuridica/resolving-real-property-disputes-in-post-ghadaffi-libya.pdf.

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[335] A/RES/60/147, *op. cit.*

[336] A/HRC/4/18, *op. cit.*

[337] *Darfur Peace Agreement*, para. 195, at: http://ucdp.uu.se/downloads/fullpeace/Sud%2020060505.pdf.

[338] See A/RES/60/147, *op. cit.*, para. 22.

[339] UN, *Reparations for Conflict-Related Sexual Violence*, Guidance Note of Secretary-General, June 2014, at: http://www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf.

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[369] UNHCR Protection Cluster (2017), pp. 46, 57.

[370] Convention on the Rights of the Child (CRC), right of all human beings to recognition as a person before the law, International Covenant on Civil and Political Rights (ICCPR), Article 16; the right of women to enter into marriage only with their free and full consent, Convention for the Elimination of Discrimination against Women (CEDaW), Article 16.1(b); the right of all children to a name, identity, birth registration and nationality, Convention on the Rights of the Child (CRC), Article 7 and ICCPR, Article 24; the right of children to know and be cared for by their parents, CRC, Article 7; the right of all persons to family life and family unity, International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 10.

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[389] According to human rights lawyer Emine Erk in addressing the British Upper Chamber. "Greek Cypriots Urged to Set up Parallel Property Commission," *Cyprus News Organisation* (17 March 2010), at: http://www.cyprus-news.org/2010/03/17/greek-cypriots-urged-to-set-up-parallel-property-commission/.

[390] Ergűn Olgun, political strategist and former undersecretary to President Denktaş, has argued that this needs to be "a win-win solution; it must work for people on both sides of the Green Line, of whatever nationality they are. A fair balance needs to be struck between the rights of original owners of land in the North and the current owners of land in the North, who have acted in good faith." *Cyprus News Organisation,* op. cit.

[391] Isser and Van der Auweraert, *op. cit*.

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[403] *Summer War in Lebanon*, *op. cit.*, p. 60.

[404] See Higher Relief Council website for background details of the compensation system. http://www.lebanonundersiege.gov.lb/english/f/eNews/NewsArticle.asp?CNewsID=261. For a full description of the compensation mechanism and its procedures, see Higher Relief Council, "Mechanism for Determining and Disbursing Damage Assistance by Residential and Nonresidential Units Resulting from the Israeli Aggression, between 12 July and 14 August 2006, in All Areas of Lebanon outside the Southern [Beirut] Suburbs" [in Arabic], at: http://www.rebuildlebanon.gov.lb/images_Gallery/00000115_Recovery%20Payment.doc.

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[408] UNDRIP, *op. cit.,* para. 28.1.

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[414] UN-Habitat, with support from Global Land Tool Network, "Land and Conflict: Toward UN System-Wide Engagement at Scale, Phase 1: Scoping and status study," Executive Summary (advanced draft), 22 October 2015, pp. 6–7.

[415] "The Challenge of Sustaining Peace: Report of the Advisory Group of Experts for the 2015, Review of the United Nations Peacebuilding Architecture," 29 June 2015, at: http://www.un.org/en/peacebuilding/pdf/150630%20Report%20of%20the%20AGE%20on%20the%202015%20Peacebuilding%20Review%20FINAL.pdf.

[416] Decision 2011/20 – Durable Solutions: Follow-up to the Secretary-General's 2009 report on peacebuilding, 4 October 2011, at: http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1265299949041/6766328-1265299960363/SG-Decision-Memo-Durable-Solutions.pdf.

[417] The Solutions Alliance is chaired by UNHCR, UNDP, the International Rescue Committee (IRC), and the Colombian and Danish governments. In addition to the Secretary General's Policy Committee *Decision on Durable Solutions*, the initiative also builds upon the Amsterdam Roundtable on Solutions held in April 2013 and lessons learned via initiatives such as Refugee Aid and Development (RAD), the International Conference on Assistance to Refugees in Africa (ICARA), the International Conference on Central American Refugees (IREFCA), the Brookings Process, and the Transitional Solutions Initiative. Around 120 participants attended the roundtable, representing host governments, civil society organizations, research institutions, the private sector, UN agencies, and the World Bank.

[418] *The Challenges of Peacekeeping in Darfur* (Kampala: International Refugee Rights Initiative, 2014), p. 26, at: http://www.refugee-rights.org/Publications/Papers/2016/UNAMID%20FINAL.pdf.

[419] United Nations Peacekeeping, at: http://www.un.org/en/peacekeeping/missions/unamid/background.shtml.

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(dec.), no. 59532/00, ECtHR, 8 March 2006; Tatyana Antsupova, "Effectiveness of the European Court of Human Rights. Challenges and Solutions," (Odessa: Yurydychna literatura, 2014), at: https://www.academia.edu/18372325/EFFECTIVENESS_OF_THE_EUROPEAN_COURT_OF_HUMAN_RIGHTS._CHALLENGES_AND_SOLUTIONS and https://tokdoc.tips/queue/download-pdf-effectiveness-of-the-european-court-of-human-rights-challenges-and-solutions?&queue_id=5b27c26f0c621e8e1f8b460d&v=1529332335&u=NDUuMjQzLjIyOC4xMjY=.

[421] For example, the UN's post-war reconstruction Shelter Cluster, chaired by UNHCR, coordinated relief efforts with local and national authorities of international agencies and NGOs in Lebanon, such as OXFAM (water and sanitation in camps); Architects in Emergencies (temporary accommodation); Architects for People in Need (temporary accommodation); Mercy Corps (temporary shelter and non-food item distribution); Danish Refugee Council (assessment and distribution), Norwegian Refugee Committee (camp management), World Food Programme (movement of shelter and non-food items); UNRWA (shelter, site management and NFI distribution for Palestinian refugees); UNDP (emergency shelter and NFI); International Organization for Migration (emergency assistance to IDPs and host families. However, it did not include Lebanese civil organizations. *The Summer War on Habitat in Lebanon: Addressing Housing Rights Violations as War Crimes* (Cairo: HLRN, December 2006), pp. 56, 76.