



**OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR REFUGEES
GENEVA**

Checklist on the Restitution of Housing and Property¹

A. General Issues

(1) Promoting Housing and Property Rights within Peace Agreements

UNHCR should attempt to play an active role in negotiations leading to peace agreements, with a view to ensuring that the housing and property aspects of voluntary repatriation are fully taken into account. UNHCR should seek to ensure that such agreements explicitly include provisions on the housing and property rights of those choosing to repatriate and that judicial or other mechanisms designed to ensure the implementation of such rights are established. Where refugees voluntarily settle elsewhere, it should be stipulated that this does not affect their right to property restitution or, should this not be possible, compensation or other form of reparation.

(2) Promoting Housing and Property Rights within Repatriation Plans

Assessment missions entrusted with preparing repatriation plans should examine how housing and property restitution will be most effectively integrated in the repatriation plan.

(3) Field Offices Should Develop a Plan of Action on Housing and Property Restitution

Field Offices in countries of origin/return should develop a plan of action on housing and property restitution. This plan will form the first step in developing an effective UNHCR response to these issues. The plan should be based on both the prevailing international and (where consistent with international law) national legal normative frameworks.² Guidance can be provided by the Department of International Protection through the Housing and

¹ This document deals mainly with the legal aspects of housing and property restitution and does not deal with the issue of damaged/destroyed property.

² Guidance on the normative framework relating to housing and property restitution issues can be found in the Refugee Survey Quarterly (vol. 19, no. 3, 2000; see in particular pages 38-51) devoted to comparative national experiences with this issue (including a detailed bibliography), and in a publication by the Centre on Housing Rights and Evictions (COHRE) on International and National Legal Resources on Housing and Property Restitution (May 2001).

Property Focal Point in the Protection Policy and Legal Advice Section. Every effort should be made to ensure the participation of potential returnees in the development of plans of action.

Plans of action on housing and property restitution should include the promotion of measures that:

- Approach housing and property restitution as a human rights and refugee protection issue;
- Rectify and provide remedies for any unjust or arbitrary applications of law relating to refugee housing or property;
- Protect all persons from homelessness or other housing rights violations;
- Ensure consistency between domestic law and relevant international law;
- Ensure equal access to impartial and effective judicial and procedural remedies, including any specific mechanism established to promote housing and property restitution;
- Ensure that the reconstruction and rehabilitation of damaged housing is seen as an indispensable element of safe and dignified return and that these two processes are seen as forming key elements in the overall restitution process;
- Protect housing and property registration records where these still exist and, if necessary, re-establish housing and property registration systems;
- Support the establishment of legal aid centres to provide expert legal assistance to returnees seeking to invoke their rights to housing and property restitution;
- Ensure that effective systems are created for equitable redress and/or financial or other forms of compensation for returnees unable to exercise their rights to housing and property restitution.

When developing plans of action, Field Offices should also take into account customary (traditional) structures for resolving disputes and addressing issues related to housing, land and property issues, as and where appropriate.

(4) If Necessary, Identify Housing and Property Experts

Field Offices should, if necessary, consider identifying housing and property experts to assist in the development of plans of action and guidelines on housing and property restitution. In addition, national housing and property experts should be utilized to assist in understanding the legal situation and the housing and property issues in the country of return/origin.

(5) Submit Field Office Plans of Action to DIP for Consideration

Once the Field Office has developed s plan of action on housing and property restitution, it should submit it to the Department of International Protection for consideration to ensure overall consistency with refugee, human rights and international law.

B. Flight to Safety, Pre-Return and Return

In addition to the five aforementioned general issues, the different phases of the displacement cycle (from flight to return) potentially involve actions which can be undertaken by UNHCR towards enhancing the prospects of eventual restitution once voluntary repatriation takes

place.

(1) *Flight to Safety: Preparing for Eventual Restitution - Incorporate Housing and Property Restitution Questions into Refugee Registration Procedures*

UNHCR officials engaged in refugee registration should attempt to gather as much information as possible at the time of flight concerning the housing and property situation of the refugee concerned. This information can be invaluable in the return planning process. Attention should be paid to the refugee's address at the time of flight, any legal ownership or tenancy documents they may have in their possession, the name of the owner of the dwelling or land concerned, the names of neighbours and other residents in the same community or any other information which can eventually be used to provide proof of the location of the refugee's original home.

(2) *Pre-Return: Setting the Framework for Restitution – Implementation of the Plan of Action on Housing and Property Restitution*

UNHCR needs to ensure that issues related to housing and property, as they would, for instance, be reflected in the plan of action, are properly addressed in the planning for and actual implementation of voluntary repatriation operations. Field Offices should pay particular attention to the following elements:

(a) Ensuring Effective Partnership and Inter-Agency Coordination/Cooperation

- ✓ Identify all relevant international and national institutions, including NGOs and community-based groups, and analyze their relevance to the promotion of housing and property restitution (Who is responsible for what? Where are the gaps? How can they be filled?).

(b) Identify Any Major Housing-Related Obstacles to Return, Including:

- ✓ The extent of secondary occupation of refugee homes
- ✓ Whether housing abandonment laws were adopted after flight
- ✓ Whether inheritance laws discriminate against women or other groups
- ✓ Whether unjust and arbitrary applications of law occurred after flight
- ✓ Whether housing and property registration records were destroyed or lost after flight
- ✓ Whether effective and impartial judicial remedies are in place
- ✓ In addition, it should be ensured that an analysis of the scope of damaged (but still habitable)/destroyed (inhabitable) property as well as status of infrastructure are made

(c) Identify All Relevant National Laws Relevant to the Housing and Property Rights of Returnees. Examine, in particular, laws relating to:

- ✓ The right to adequate housing and property restitution
- ✓ The right to property and the peaceful enjoyment of possessions
- ✓ The right to protected against forced evictions
- ✓ The right to privacy and respect for the home
- ✓ The right to freedom of movement and to choose one's residence
- ✓ The rights of indigenous peoples (as relevant)

(d) Promote Legislative Analysis, Legislative Repeal and Legislative Reform, as Necessary and Appropriate

- ✓ **Legislative Analysis:** Collect, translate and analyse housing and property legislation currently in force in countries of origin.
- ✓ **Legislative Repeal:** Identify any housing and property legislation which is inconsistent with international human rights standards.
- ✓ **Legislative Reform:** Promote the development of a domestic legal system which is consistent with international human rights standards relating to housing and property rights.

(3) Return: Implementation of Housing and Restitution Laws

Besides a fair and efficient property restitution framework, the consideration and promotion of additional measures may be necessary to ensure the full and effective implementation of restitution laws:

- ✓ Running of public information campaigns to inform claimants about their rights and obligations and to ensure that they receive the necessary guidance and counselling as to the procedures to be followed, including access to fair and effective remedies;
- ✓ De-mining and reconstruction projects should be tailored to support the implementation of property laws (e.g. priority of shelter projects for those who are currently occupying someone else's home);
- ✓ Restoration of infrastructure where it is damaged or destroyed;
- ✓ Establishment of mechanisms to resolve property issues of those who have decided not to return (e.g. creation of a fair and equitable environment for real estate transactions to allow displaced persons and refugees who do not wish to return to integrate into communities or environments of current displacement; such initiatives, however, must not undermine the principle of return);
- ✓ Creation of sufficient alternative accommodation (interim accommodation) to speed up the restitution process;
- ✓ Creation of social housing for those who do not have a place to return to;
- ✓ Establish linkage between property laws and legislation dealing with displaced persons and repatriates;
- ✓ In case of a flawed national property restitution framework, promote, if possible and as appropriate, proceedings to invoke the right to property before treaty bodies (e.g. European Court of Human Rights; Inter-American Commission on Human Rights).

UNHCR

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