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**Excerpt from Expert Study:  
*Housing and Property Issues for Refugees and Internally Displaced  
Persons in the Context of Return – Key Considerations for UNHCR Policy and Practice*  
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**5. IMPLEMENTING A HOUSING RIGHTS APPROACH TO HOUSING AND  
PROPERTY RESTITUTION**

Clarifying, regularising and protecting housing and property rights issues in countries of origin constitute fundamental components of successful repatriation. In the absence of a clear legal and political framework upon which return processes are based, ensuring an enforceable right to housing and property restitution for each returning refugee will be exceedingly difficult. For restitution rights to be protected, housing and property issues must be taken seriously by refugee institutions at all stages of the refugee process: during the flight to safety, during the asylum or pre-return period and within the post-return context.

Given the inseparable linkages between housing and property restitution and the future economic and social stability within countries of origin, there are strong arguments in favour of increasingly viewing, conceiving and executing repatriation programmes not only as tools promoting justice and the return of displaced persons to their homes, but also as part of a larger process of development. Such an approach supports the emergence of the rule of law and the protection and promotion of human rights, and ensures that return programmes do not become simply exercises in moving people between two less than ideal locations. The much discussed ‘gap’ between return and development finds tangible substance in the search for sustainable solutions to housing and property rights issues arising in the context of restitution. Indeed, an adequate focus on restitution allows the integration of humanitarian, emergency and development considerations into a framework recognising rights, ensuring justice and promoting sustainable, long-term solutions.

In addition to integrating the social and economic rights dimensions of refugee return into larger efforts at reconstruction, repatriation programmes should always explicitly protect the housing and property rights of women, and ensure that discrimination against women is prevented in all areas, in particular in the areas of housing, land and property.<sup>2</sup> Rights to inherit property, rights to participate in

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<sup>1</sup> Published in *Refugee Survey Quarterly*, vol. 19, no. 3, 2000, pp. 52–63.

<sup>2</sup> This point is also recognised in the UNHCR Voluntary Repatriation Handbook: “Special attention needs to be paid to the question of access to land for residential and agricultural use by returnee women heads of households. If the local legislation or traditional practice does not grant returnee women the same rights to land as returnee men, UNHCR has to draw the attention of the authorities to this problem and seek to find suitable ways to rectify this situation. If this is not done early enough, there is a danger that returnee women may lose out in the competition for land, either by not getting access or being evicted. This may in turn lead to increased vulnerability and possible internal displacement. In any case, UNHCR has to closely monitor the handling of returnees’ access to land and to ensure, if necessary through intervention, that returnee women have access to land on the same footing as returnee men.”

the restitution process and equal rights to ownership, use and control of housing, property and land must be guaranteed and securely recognised prior to the involvement of the international community in return processes. Women's rights must pervade all elements of the restitution process, and steps should be taken to use such processes as an opportunity for securing such rights in places where discrimination against women obstructs the enjoyment of housing and property rights.

In addition to the necessity of securing the rights of refugee and IDP women throughout the stages of displacement and return, care must also be taken to ensure that *all* returnees are treated equally with respect to their housing tenure status. In other words, restitution rights should not be restricted to owners of housing, but should be accorded to tenants, housing co-operative residents, those possessing occupancy rights and other tenure groups, as well as owners.

In addition to these generic elements, policy-makers and those responsible for implementing these rights at the field level should take a variety of additional factors - legal, social, economic, cultural - into account during the development of plans, mechanisms and policies designed to ensure the enjoyment of restitution rights by returnees. Pro-active steps to promote restitution can be taken during the period of flight, prior to return and subsequent to return to protect the housing and property rights of refugees and IDPs.

### ***Flight to Safety: Preparing for Eventual Restitution***

#### ***5.1 Incorporating Housing and Property Restitution Issues Into First-line Refugee and IDP Registration Procedures***

Systems should be developed by UNHCR and other actors involved with refugee registration procedures to obtain as much detailed information as possible regarding the housing and property situation of the refugee or IDP at the time of flight. All official registration points and relevant forms should include specific questions concerning the address, type of tenure status, ownership records and other personal housing information from the beginning to provide a reasonably objective source of information for use in eventual repatriation. This can act as a powerful tool in ultimately reversing any attempts at ethnic cleansing and maintain housing and property records that may have intentionally been destroyed by refugee and IDP generating States and governments. Above all, this information can be vital in ensuring that restitution finds a key place in repatriation plans.

### ***Pre-Return: Setting the Framework for Restitution***

#### ***5.2 Creating the Right Mechanisms within Peace Settlements and Country Agreements***

As peace settlements and country agreements are almost invariably concluded prior to organised repatriation plans, restitution issues should be considered during the negotiations of these instruments to ensure that restitution rights are firmly included. Specific mention of the legal, judicial and other mechanisms required to protect these rights need explicit inclusion within such texts. If restitution issues are included within peace settlements and country agreements (as they were within the Dayton Accords, for instance), UNHCR and other institutions can be given considerably more leverage to assert the rights of returnees to housing and property restitution. Equally, if restitution rights are explicitly enshrined within the applicable domestic law in the country of return, the likelihood of refugees and IDPs actually returning home - while by no means guaranteed - is far greater than when such rights are either ignored or treated merely as desired goals or objectives rather than justiciable guarantees.

Although the creation of judicial and other mechanisms to secure housing and property restitution rights to returnees is often indispensable for restitution to occur, practice has shown that given the complexities associated with restitution and the often highly-charged nature of housing and property disputes in many countries of return, establishing procedural remedies alone will not generally be sufficient to guarantee that all persons with rights to restitution will actually be able to exercise these.

The restitution process is a broader process than the remedial elements contained within it. Fundamental political decisions concerning the types of claims which can be submitted to a given mechanism, who can present such claims, how far back in time the claims can go, whether a right to appeal decisions made by the mechanism concerned are available, 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 and a range of other considerations will invariably accompany the procedural elements associated with mechanisms designed to promote restitution.

### *5.3 Effective Institutional Co-ordination*

Refugee and IDP repatriation operations are rarely isolated to UNHCR alone. Many other UN and other inter-governmental agencies, peacekeeping forces, NGO's, national agencies, judicial bodies and other actors are often involved in processes ultimately involving housing and property restitution. To ensure the successful restitution of the original homes of returnees, institutional efforts should be well co-ordinated through the conclusion of memorandums of understanding aimed at promoting co-operative actions prior to, during and subsequent to voluntary return programmes. The appointment of one agency to oversee the co-ordination of restitution may facilitate restitution.

### *5.4 Refugee Participation in Developing Repatriation Plans*

The central role of returnee participation and control of the return process cannot be over-estimated. There is a need to incorporate refugees' own interpretations of what it means to call a place 'home' and an implicit understanding that not all returnees will want to return to their original homes. Repatriation will be more likely to succeed when returnees are involved as equal partners in the consultative process developing policies on return, and when closer attention is paid to 'relations after return, and to recognise that even if repatriation is the end of one cycle, it is also usually the beginning of a new cycle which can challenge and expose some returnees to vulnerability'.<sup>3</sup> Returnee participation will also increase the likelihood of assessing the position of local populations vis-à-vis the returnee population and to ensuring that the local housing law and practice is adequately grasped by the agencies promoting return.<sup>4</sup>

The provision of information conducive to return by potential returnees can also assist in the preparations for repatriation. This is perhaps best illustrated by work now underway in eastern Nepal. A survey of the housing, property and land situation of every Bhutanese refugee at the time of flight is currently under preparation by the refugee communities themselves. This project (which could be surely be replicated elsewhere) seeks to create a comprehensive digital data-base of the lands, homes and properties in Bhutan of each of the 100,000 refugees as a pre-cursor to eventual return and to provide the proper basis for fair and just restitution of those lands, homes and properties. They are also aiming to discern the exact situation of each refugee home and lands today in order to ensure that the original owners get back what is rightfully theirs.

### ***Post-Return: Making Restitution a Reality***

#### *5.5 The Human Right to Housing and Property Restitution*

The human right to adequate housing and the congruent right to property restitution should guide and be viewed as indispensable elements of any repatriation programme or policy supported by the international community. These rights should be included - explicitly - within peace settlements,

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<sup>3</sup> *The End of the Refugee Cycle?: Refugee Repatriation & Reconstruction* (Richard Black & Khalid Koser, eds), Berghahn Books, New York, 3.

<sup>4</sup> The minimal participation of local lawyers in the peace process culminating in the Dayton Peace Agreement, was surely a contributing factor to the final agreement placing too much emphasis on real property rights, while failing to recognise that up to 50% of the pre-war Bosnia population were non-owning tenants living in socially-owned flats.

repatriation programmes, return plans and any other agreements in which UNHCR is involved. This is true even concerning intractable conflicts.<sup>5</sup> While security guarantees and local conditions will perhaps continue to be the most visible determinant of voluntary repatriation, housing and property concerns should always be taken fully into account from the beginning.

In order to ensure compatibility between international standards on restitution and the domestic laws in the country concerned, legal analysis, repeal and reform should form a cornerstone of programmes designed to ensure the right to housing and property restitution. *Legislative analysis* should involve the collection, translation and thorough analysis of housing and property legislation currently in force in countries of origin (including all international human rights obligations relevant to housing and property rights) to determine the extent to which these laws protect housing and property rights. Measures supporting *legislative repeal* should involve the identification of housing and property laws currently in force in the country of origin, but which are considered to be manifestly incompatible with international standards or which are formulated or applied in a discriminatory manner. *Legislative reform* should involve the promoting the development of a domestic legal system which is compatible between international standards relevant to the restitution of housing and property rights.

The often weak attention accorded economic, social and cultural rights within domestic legal frameworks and the comparative ease with which housing and property rights can be manipulated to prevent return suggests the need for principle-based approaches during all aspects of the return process designed to secure compliance with international housing rights obligations. Devoting attention to housing and property restitution in the context of return provides ample opportunity to UNCHR to assist countries of origin to apply, for instance, the norms of the Covenant on Economic, Social and Cultural Rights to the return and post-return process. Approached in this way, return facilitates the implementation of economic, social and cultural rights, ensures protection within the context of voluntary repatriation, as well as creating conditions favourable for economic development.

#### *5.6 Rectifying Unjust and Arbitrary Applications of the Law*

Successful voluntary repatriation may also require steps designed to rectify past unjust and arbitrary applications of the law in order to restore the housing and property rights of returnees. In Bosnia, Croatia, Kosovo, Georgia, Rwanda and elsewhere, the application of discriminatory, biased and unfair laws impinging upon the housing and property rights against members certain groups have contributed to the difficulties surrounding return. Unless such applications of law are reversed and temporarily lost rights restored, repatriation processes will be severely hampered. In cases involving secondary occupation, for instance, it would seem clear that when this has been organised by and is attributable to the State of origin, the same State must be held accountable to reverse these measures. This duty should be included in any repatriation programme developed by or agreed to by UNHCR. In many instances, of course, restitution will be functionally impossible unless past injustices are rectified. While some may argue that reversing the results of past discrimination may only serve to create instability and renewed ethnic conflict, the dangers of allowing these measures to stand are surely larger threats to long-term stability.

#### *5.7 Protection From Homelessness or Other Housing Rights Violations*

To succeed and run smoothly, the repatriation process should always ensure that any housing and property restitution component prevents situations of homelessness or other violations of the right to adequate housing. This is relevant in all cases, but particularly in cases involving the secondary

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<sup>5</sup> See, for instance, the Agreement on Cyprus (1992) which seeks to ensure that ‘all displaced persons have the option to return to their former residences or to claim compensation for property located in the federated state administered by the other community’. UNGA Res. 3212 (1974) ‘considers that all the refugees should return to their homes in safety and calls upon the parties concerned to undertake urgent measures to that end’. (A/RES/29/3212 (1 November 1974).

occupation of housing and property where evictions of unlawful and illegitimate occupants may need to occur (if voluntary moves are not forthcoming) for restitution rights to be enforced. All programmes of return involving housing and property disputes should contain assurances that even those who have no lawful or other rights to dwell within housing or property registered to returnees, do not become homeless or other rights violations. In this regard, account should be taken of provisions contained in General Comment No. 7 (1997) on Forced Evictions issued by the UN Committee on Economic, Social and Cultural Rights which stipulates that

*Evictions should not result in rendering individuals 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 access to productive land, as the case may be, is available.*<sup>6</sup>

Restitution will obviously mean that the current occupants of the homes in question will be required to vacate the premises in order to ensure the repatriation of the returnees if and when the original inhabitant makes a successful claim to do so to the appropriate adjudicative body. To the maximum possible extent, such relocation should take place on a voluntary basis, with enforceable legal guarantees in place stipulating that under no circumstances will any secondary occupant become homeless or be forced to reside in intolerable living conditions.<sup>7</sup> The possible social and other ramifications associated with resultant homelessness, instability, poverty, and frustration if the process of relocation is not carried out carefully must not be under-estimated.<sup>8</sup>

#### 5.8 Streamlining Domestic Law with Relevant International Law

The repatriation process will sometimes require the provision of UNHCR assistance to countries of origin to facilitate the streamlining of domestic laws with international obligations held by the country concerned. This can occur through the repeal of domestic laws that are discriminatory in nature or otherwise manifestly incompatible with internationally recognised human rights and refugee law generally. In Kosovo, the relevant UN authorities have repealed a discriminatory housing law<sup>9</sup>, and in Bosnia (much at the request of UNHCR and others), laws on abandoned apartments have been repealed.<sup>10</sup> Undertaking activities designed to promote compatibility between local and international laws, also provides a good opportunity to expand attention to and understanding by municipal authorities and citizens of the manner by which international human rights and refugee addresses issues relating to housing and property rights and how these norms can be incorporated into the national legal framework. This, too, will promote voluntary return and the rule of law.

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<sup>6</sup> Para. 17, E/C.12/1997/4. These sentiments are echoed in the 1997 Comprehensive Human Rights Guidelines on Development-Based Displacement: *The Obligation to Prevent Homelessness* 13. *States should ensure that no persons, groups or communities are rendered homeless or are exposed to the violation of any other human rights as a consequence of a forced eviction.*

<sup>7</sup> General Comment No 7 on 'Forced evictions', adopted on 16 May 1997 by the UN Committee on Economic, Social and Cultural Rights stipulates clearly that: "States parties shall also see to it that all individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected" (para. 14).

<sup>8</sup> World Bank Operational Directive 4.30 on "Involuntary Resettlement" contains the following relevant provisions: "Displaced persons should be compensated for their losses at full replacement costs prior to the actual move"; "Land, housing, infrastructure and compensation should be provided, the absence of legal title to land by such groups should not be a bar to compensation"(para. 3e); "Experience indicates that cash compensation alone is normally inadequate" (para. 4); and "Valuation of lost assets should be made at their replacement costs"(para. 14).

<sup>9</sup> UNMIK Regulation 1999/10 (20 October 1999) *On the Repeal of Discriminatory Legislation Affecting Housing and Property in Kosovo.*

<sup>10</sup> The Office of the Human Rights Ombudsperson for Bosnia and Herzegovina, for instance, issued a Special Report (No. 980/79) on The right to respect for one's home and The right to the peace enjoyment of one's possessions With respect to the privatisation of the Housing Fund Addressed to the Parliament and the Government of the Federation of Bosnia and Herzegovina. This is a good example of a function which can be played by the international community to ensure compatibility between domestic and international standards.

## 5.9 Judicial and Procedural Remedies

Given the often-diverse ways by which restitution rights can be obstructed, many housing and property disputes may require remedies developed on a case-by-case basis. Each affected person, including returning refugees, returning IDPs and secondary occupants of housing in which tenancy or ownership rights are in dispute must have the right to effective legal remedies, including the right to a hearing by an independent and impartial tribunal. This accords well with article 8 of the Universal Declaration on Human Rights that ensures 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”.

Because judicial systems are sometimes the actual source of discrimination and other housing and property problems, many repatriation initiatives establish housing and property claims commissions which are immediately accessible to all refugees, IDPs and current occupants in disputed dwellings and through which the right to effective remedies can be exercised. As mentioned above, independent housing and property bodies, such as those in Bosnia, South Africa and planned for Georgia and Kosovo will assist in fairly and equitably solving outstanding housing and property disputes.

## 5.10 Equitable Redress and Compensation

*Post-war reconstruction, repairing the devastation that the war brought in its train, and compensation for losses ... constitute a problem common to all these countries. Alongside the reconstruction of material damage a solution had to be found to many social problems arising from changes in citizenship and ownership. The problems of the displaced persons or refugees or expellees have in many countries been among the most difficult.*<sup>11</sup>

States have sometimes sought to avoid the difficulties often associated with restitution by proposing the provision of compensation to persons for whom restitution is considered to be materially impossible. One UNHCR publication has also supported this approach under certain circumstances.<sup>12</sup>

Although rights to compensation<sup>13</sup> are of great importance and recognised for more than half a century,<sup>14</sup> promises and expectations surrounding the provision of compensation rarely come to

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<sup>11</sup> Heikki Waris and Victor Procope (1953) *The Problem of Compensating Property Losses: Experiences Gained from the Compensation Policy for Displaced Persons in Finland*, in *Economica Internazionale*, vol. VI, N. 3, Genova.

<sup>12</sup> When a person has been deprived of his property rights and the restitution of the property itself proves to be difficult or even impossible, compensation is a wise means of both doing him justice and restoring his rights. Compensation may not be the most popular solution for those who feel they have been victimised by abusive expropriations and demand justice. Even though imperfect or apparently unfair, however, this solution offers real advantages and should be privileged in many situations. In a spirit of pragmatism and efficacy, it may sometimes be preferable to opt for the solution of compensation, even though it may appear unfair to the victims, rather than to seek at any cost to return the land, and eventually run the risk of destroying the whole undertaking”. (UNHCR Inspection and Evaluation Service (May 1998) *The Problem of Access to Land and Ownership in Repatriation Operations (EVAL/03/98)*, pp. 12, 14).

<sup>13</sup> On the work of the UN Compensation Commission, see: Norbert Wuhler (1999) ‘The United Nations Compensation Commission: A New Contribution to the Process of International Claims Resolution’ in *Journal of International Economic Law*, 249; Veijo Heiskanen and Robert O’Brian ‘UN Compensation Commission Panel Sets Precedents on Government Claims’ in *American Journal of International Law*, vol. 92, 339; and Ronald J. Bettauer (1995) ‘The United Nations Compensation Commission - Developments Since October 1992’ in *American Journal of International Law*, vol. 89, 416.

<sup>14</sup> For instance, under *Resolution 19(III) (11 December 1948)* “The General Assembly...Resolves that compensation should be paid for the property of those [refugees] choosing not to return and for the loss or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible...”.

fruition.<sup>15</sup> Compensation costs almost invariably reach amounts considerably higher than initially envisaged at the time compensation was agreed. The payment of compensation on a large-scale can also result in the legitimisation of human rights violations, and it can place overwhelming burdens on the economy of States.<sup>16</sup>

While cash compensation is often viewed as a simple means of settling housing and property disputes, cash compensation should be reserved only for exceptional cases involving lost movable assets and human rights violations. Practice has repeatedly shown - particularly in the context of development-based displacement involving the loss of housing - that cash compensation is rarely used to secure an adequate home, and can, in fact, be a reason for a person becoming homeless. The World Bank warns against this form of compensation: "cash compensation alone should generally be avoided, except in well-justified instances, as it typically leads to impoverishment".<sup>17</sup>

There are many alternative means, other than monetary alone, which can satisfy the obligations associated with the provision of compensation. The obvious first alternative to cash compensation would be the construction - by the State or subsidised by the State - of adequate, affordable and accessible housing which could be made available to returnees or displaced secondary occupants. Other housing-based or fair alternative solutions might be made accessible through a range of creative measures, including: the establishment of State housing fund which issues government housing bonds, vouchers or individual subsidies which can only be redeemed in relation to the construction of residences; Government assistance for returnees in finding an empty existing flat or in accessing new housing; tax reductions could be given returnees for a given period; returnees could be placed at the head of the official housing waiting list; state land plots could be allocated to the returnees; government bonds in a substantial sum could be provided to returnees or; returnees could be given favourable housing credits for building materials should they choose to build new housing themselves.

When these limitations are taken into account, the result is often simply that the amounts awarded to recipients is based on an arbitrarily developed limit, which itself may be wholly insufficient as a means of securing justice. Goodwin-Gill has argued in this respect "that the right of refugees to return to one's home "continues to hold primary position in the hierarchy of solutions, but the right of refugees to compensation has still a fairly weak normative base in international law and, like the putative duty to provide solutions, possibly little to recommend it....Although the principle of compensating the victims of violations of human rights has much to commend it, introducing a financial substitute for State and community obligations risks lending respectability to ethnic, religious and ideological cleansing".<sup>18</sup>

When compensation is provided it must be given in a manner which is reasonable in terms of its relationship with the value of the damage suffered by the victim. The European Court on Human Rights has stated clearly that compensation for the deprivation of property (as distinct from interference alone) must be given in a prompt, appropriate and effective manner and in "an amount

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<sup>15</sup> For instance, a bilateral agreement between Armenia and Azerbaijan on mutual compensation of displaced persons, developed during preparatory meetings to the CIS Migration Conference, was not ratified by the Parliament of Azerbaijan and subsequently not re-negotiated. While the Programme of Action of the CIS Conference calls for compensation through bilateral and multi-lateral mechanisms, but essentially without results.

<sup>16</sup> It is a basic principle under international law that the violation of any human right gives rise to a right to reparation for the victim. The UN Special Rapporteur on Compensation and Human Rights has asserted that compensation must be: "provided for any economically assessable damage resulting from human rights violations, such as: a. Physical or mental harm; b. Pain, suffering and emotional distress; c. Lost opportunities, including education; d. Loss of earning and earning capacity; e. Reasonable medical and other expenses of rehabilitation; f. Harm to property or business, including lost profits; g. Harm to reputation or dignity; h. Reasonable costs and fees of legal or expert assistance to obtain a remedy".

<sup>17</sup> World Bank Operational Directive 4.30.

<sup>18</sup> Guy Goodwin-Gill (1996) *The Refugee in International Law*, Clarendon, Oxford, 269.

reasonably related to [the value of the property]”.<sup>19</sup> However, the Court added in the same judgement that the peaceful enjoyment of possessions clause under the ECHR “does not guarantee a right to full compensation in all circumstances, since legitimate objectives of ‘public interest’, such as pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value”.<sup>20</sup> This is relevant when secondary occupants refuse to be re-housed.

It will also be important to ensure that appropriate forms and amounts of compensation are provided to returnees who lost movable property and assets as a result of their flight to safety. In addition to people losing their legal rights to reside in certain homes, many also have lost - through military actions, theft and vandalism - personal affects including household possessions, furniture and other personal goods, agricultural machinery, farm animals and so forth. Returnees should be availed the opportunity to claim such losses before an independent claims body. If it is decided that the returnee has a right to compensation for lost movable property, this should be made at replacement cost or through the substitution of the lost asset with another of comparable productive capacity. Any compensation provided under this rubric must specify regulations for the standard valuation of lost movable assets. Whatever regulations are developed must ensure that the level of compensation is just and that it provides the affected person(s) with a real substitute for the asset lost.

#### *5.11 Reconstruction and Rehabilitation of Damaged Housing*

In recognition of the importance of housing and property to the entire repatriation process, direct UNHCR assistance in the housing/shelter sector has grown markedly in recent years. This has resulted in the reconstruction of tens of thousands of damaged homes in Tajikistan, Bosnia, Kosovo, Rwanda, and elsewhere, and has contributed significantly to the promotion of secure and dignified return.<sup>21</sup> The relationship between the availability of adequate housing resources and return is clear. What is sometimes less evident, however, is the necessity of understanding the often complex legal, policy and political issues surrounding housing and property rights in countries of return and having clarity with respect to ownership and tenants rights *prior to* initiating the reconstruction and rehabilitation process; even if the actual return to the original homes takes place at a later point in the process. For instance, if property disputes are unresolved, the houses occupied by illegitimate occupants may be inadvertently be reconstructed and thus benefit secondary occupants rather than the original owner/tenant. As a result, ethnic cleansing would be cemented rather than reversed.

#### *5.12 Protection or Re-establishment of Housing and Property Records*

Although the protection or re-establishment of housing and property records may seem to have little to do with the mandate of UNHCR, the organisation can play an important role in this respect, and in the process facilitate restitution. In many conflict situations, housing and property cadastres and records are consciously destroyed or confiscated by one of the warring parties with the aim of extinguishing the rights of members of another group. This was the case most recently in Kosovo where more than 50% of these records have disappeared. Without access to such records, determining who is or is not the original owner or inhabitant of a house or property under dispute is made very difficult. Consequently, UNHCR should support efforts aimed at improving housing and property registration systems as a preventative tool against housing rights violations and re-establishing cadastral and housing registration systems where they have been totally or partially destroyed or confiscated.

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<sup>19</sup> *Lithgow and others* judgement of 8 July 1986, para. 121.

<sup>20</sup> *Id.*, and *James and others v. U.K.* (1986), para. 54.

<sup>21</sup> In Bosnia, some of the houses built by UNHCR were subsequently destroyed in attempts to prevent minority return. Such actions, however, should not deter UNHCR from this important contribution to both facilitating return and securing the enjoyment of habitable housing for large numbers of beneficiaries.



## 6. CONCLUSIONS

The recognition of the rights of refugees and IDPs not merely to return to their country of origin, but to return to their *original or permanent homes* once they choose to do so has received expanded attention in recent years. The very notion of restitution requires that persons who have suffered violations of their rights, including the loss of the use of their housing or property, should be entitled to the right to 'return to one's place of residence' and the equivalent right to the 'restoration of property'. These two principles should form the fundamental basis for addressing the property and housing issues in the context of return.

Throughout the 1990s, however, UNHCR policy with respect to housing, property and land restitution - while expanding immensely in scope - was irregular and largely *ad hoc* in nature. In some cases, full restitution was pursued, and in others the issue was considerably underplayed. While it is recognised that UNHCR's influence to ensure restitution is limited in situations of spontaneous return, there can be no doubting the fact that in the context of organised return, the role of UNHCR in securing these rights is indispensable. If the larger emphasis on voluntary repatriation is to succeed, heed should be taken of the following perspective concerning on what basis UNHCR is to make policy decisions guiding the work of the organisation:

*The political aspects of today's refugee problems signal, in particular, the policy dimensions, and the choices that must be made by governments and international organisations. These choices include whether to abide by international obligations; whether to follow established principles, or to respond ad hoc to situations; whether to promote the development of new international instruments or agencies; whether to refine national responses to refugee flows, by changing laws and procedures or introducing obstacles to arrival; whether to go beyond the precedents; whether to support international humanitarian relief; whether to promote solutions, and which ones; whether to try to deal with causes. Each of these political decisions, of course, takes place within a context in which legal rules - human rights law, refugee law, international humanitarian law - ought to have their impact.<sup>22</sup>*

The human right to adequate housing and the right to housing and property restitution for returning refugees and IDPs can be enforced and implemented in a positive and highly effective manner. It will be up to policy-makers within UNHCR to see to it that these rights are kept under constant consideration and that the right to have restored to returnees, housing and property for which they have a right, guides all decisions during the development of programmes of return.

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<sup>22</sup> Guy S. Goodwin-Gill (1998) 'Refugee Identity and Protection's Fading Prospect' in *Refugee Rights and Realities: Evolving International Concepts and Regimes*, Cambridge University Press, Cambridge. He also states: 'where there is law and principle, so there is strength and the capacity to oppose. Where there are merely policies and guidelines, everything, including protection, is negotiable, and that includes refugees' (Id, 20).