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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**Housing and property restitution in the context of the return of refugees
and internally displaced persons**

**Progress report of the Special Rapporteur, Paulo Sérgio Pinheiro, submitted
in accordance with Sub-Commission resolution 2002/7**

Introduction

1. At its fifty-fifth session, the Sub-Commission on the Promotion and Protection of Human Rights, in its resolution 2003/18, welcomed the preliminary report submitted by the Special Rapporteur, Paulo Sérgio Pinheiro, on housing and property restitution in the context of the return of refugees and internally displaced persons (E/CN.4/Sub.2/2003/11) and endorsed the conclusions and recommendation contained therein. The preliminary report contained an overview of real world cases where restitution was utilized as a remedy, with an emphasis on post-conflict situations. The study also provided an analysis of common obstacles to restitution, and emphasized the importance of restitution as a form of restorative justice.

2. Based on the recognition that, to date, approaches to housing and property restitution remain disparate, and that many restitution policies are marred by conceptually flawed strategies, biased policies and ineffectual institutions which have not had the internal and external supports necessary to complete their mandates, the preliminary study concluded, inter alia, that there is a need to establish a comprehensive approach to restitution policy, informed by international human rights law.

3. In order to provide guidance with regard to international standard setting in this area, the present report includes a set of “Draft Principles on Housing and Property Restitution for Refugees and Displaced Persons” (hereinafter “Draft Principles”).¹ These Draft Principles are consistent with international human rights law and international humanitarian law, and are meant to provide guidance to States seeking to implement restitution programmes as well as to intergovernmental and non-governmental organizations addressing issues of population displacement, post-conflict peace-building, and restitution. The Draft Principles reflect the view that a human rights-based approach to return and restitution will yield equitable and sustainable results in achieving the restoration of housing and property rights for refugees and displaced persons and in creating long-term stability.

4. These Draft Principles have been developed in consultation with various agencies and organizations involved in restitution processes, and reflect the most recent research findings in the field.² It is hoped that over the course of the next year, the consultations process can be further expanded to benefit from the experience and knowledge of all relevant agencies and organs of the United Nations, Governments and non-governmental organizations (NGOs), so as to facilitate the development of these Draft Principles. In particular, the Special Rapporteur would like to suggest that a high-level international meeting be convened in early 2005 to discuss the Draft Principles. It is suggested that the Draft Principles be disseminated as widely as possible in order to facilitate this consultation before the Special Rapporteur submits his final report in 2005.

I. BACKGROUND

5. The impetus for the current project illustrates the vital and collaborative relationship between the Sub-Commission and the United Nations human rights treaty monitoring bodies. In 1996, at the seventh meeting of persons chairing the human rights treaty bodies, the chairpersons of the treaty-monitoring bodies recommended that the treaty bodies should take a more active role in supporting, suggesting topics for and cooperating in the preparation of studies by the Sub-Commission.³ The Committee on the Elimination of Racial Discrimination (CERD)

discussed this issue at its fiftieth session in 1997, and decided to propose to the Sub-Commission nine topics for the preparation of studies, including one on “the return of refugees’ or displaced persons’ property”.⁴

6. At that time, CERD observed that “the flight of hundreds of thousands of refugees or displaced persons who leave their homes and properties empty, as a result of an armed conflict, frequently results in such property being occupied by non-authorized people. Such is at present the case in the Great Lakes region, Bosnia and Herzegovina, Cyprus and elsewhere. After their return to their homes of origin all such refugees and displaced persons have the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated for any such property that cannot be restored. Furthermore, any commitments or statements relating to such property made under duress should be null and void. The magnitude of this problem is such that it requires a study on the basis of international law and existing international instruments in the field of human rights”.⁵ In a letter dated 19 March 1997, Michael Banton, the Chairperson of CERD, communicated these proposals to the Chairperson of the forty-eighth session of the Sub-Commission and requested that he present them to the Sub-Commission at its forty-ninth session.⁶

7. At its forty-ninth session, the Sub-Commission, in its resolution 1997/5, expressed its gratitude to CERD for recommending future Sub-Commission studies that could usefully contribute to the work of the Committee. Furthermore, in its decision 1997/112, the Sub-Commission decided to devote special attention to subjects proposed by treaty bodies when choosing new subjects for study. The Sub-Commission also responded to the request by CERD by preparing working papers and subsequent comprehensive studies authorized by the Commission on Human Rights and the Economic and Social Council, with regard to two of the other topics proposed by CERD on affirmative action and the rights of non-citizens.

8. In its resolution 1999/47, the Commission on Human Rights encouraged the Sub-Commission to continue its work on the matter of housing and property restitution in the context of the return of refugees and internally displaced persons. At its fifty-third session, the Sub-Commission, in its decision 2001/122, entrusted Mr. Paulo Sérgio Pinheiro with the preparation of a working paper on the return of refugees’ or displaced persons’ property, to be submitted to the Sub-Commission in order to enable it to take a decision at its fifty-fourth session on the feasibility of a comprehensive study on that subject.

9. The working paper on the return of refugees’ or displaced persons’ property (E/CN.4/Sub.2/2002/17), provides preliminary comments on the right to return to one’s original home and the role of housing and property restitution, and lays out the legal underpinnings within international human rights and humanitarian law protecting this right. It also highlights the importance of housing and property restitution to the development of durable solutions to displacement. The Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR) requires the organization to seek permanent solutions to the problem of refugees by assisting Governments in facilitating their voluntary repatriation, or their “assimilation” within the national communities.⁷ While there is no hierarchy among the three solutions (voluntary repatriation, local integration into countries of asylum and resettlement in third countries) in practice, voluntary repatriation, where viable, has come to be the preferred of the three options.⁸ In this regard, UNHCR has recognized that restitution of or access to housing and property rights are essential in order to achieve sustainable returns.

10. In order to facilitate the continuation of this work, at its fifty-fourth session, the Sub-Commission, in its resolution 2002/7, decided to entrust the Special Rapporteur, Mr. Paulo Sérgio Pinheiro, with the task of preparing a comprehensive study on housing and property restitution in the context of the return of refugees and internally displaced persons based on his working paper as well as on the comments made and the discussions that took place at the fifty-fourth session of the Sub-Commission and the fifty-eighth session of the Commission on Human Rights. At its fifty-ninth session, in its decision 2003/109, the Commission endorsed the decision of the Sub-Commission.

11. The preliminary study submitted to the Sub-Commission at its fifty-fifth session by the Special Rapporteur on housing and property restitution in the context of the return of refugees and internally displaced persons (E/CN.4/Sub.2/2003/11), provides an overview of past situations involving housing and property restitution and identifies some of the common obstacles to the effective implementation of housing and property restitution policies and programmes. These included secondary occupation, property destruction, loss or destruction of property, ineffectual institutions and discriminatory restitution programmes.⁹

12. Upon careful review, the central conclusion of the preliminary study was that there continues to be a striking gap at the international level in terms of a definitive standard meant to guide the development and implementation of national restitution policies and programmes, based on international human rights law and humanitarian law. While a series of national programmes and standards have been created that address various aspects of restitution, these have yet to be consolidated into a single standard. Too often, restitution policies and programmes have taken disparate approaches to the challenge of housing and property restitution for refugees and displaced persons, leading to unsatisfactory results.

13. The preliminary study therefore recommended that the Sub-Commission work to consolidate existing standards and develop an authoritative international standard on restitution, in collaboration with all relevant agencies and organs of the United Nations system, Governments and NGOs. The present report provides the first foray into such a task, and includes the “Draft Principles on Housing and Property Restitution for Refugees and Displaced Persons”, for consideration by the Sub-Commission.

II. THE DEVELOPMENT OF THE DRAFT PRINCIPLES ON HOUSING AND PROPERTY RESTITUTION FOR REFUGEES AND DISPLACED PERSONS

14. The issue of housing and property restitution is a pressing concern for millions of persons displaced throughout the world. Indeed, in recent years, no region of the world has been immune from massive human migration sparked by, inter alia, armed conflict, violations of human rights, situations of generalized violence, and natural or human-made disasters. Today, there are approximately 12.4 million refugees worldwide,¹⁰ and an additional 25 million internally displaced persons.¹¹ For those who have been forcibly uprooted from their homes and lands, returning home in safety and dignity is often seen as the most desired, sustainable, and dignified solution to displacement.

15. Yet, as illustrated in the preliminary report, returning home is often fraught with political uncertainty, even in situations where violence has ceased, and restitution processes are often compromised by a failure to deal effectively with legal and practical obstacles and to adequately enforce the rule of law. While the international community has made important contributions to the implementation of several voluntary repatriation programmes, there continues to be a need for a consolidated set of international standards on housing and property restitution in the context of the return of refugees and other displaced persons.

16. The Draft Principles contribute to the development of such international standards and draw upon existing international human rights and humanitarian law in order to develop a universal approach to housing and property restitution policy at both the national and international level. As such, the Draft Principles do not seek to articulate or advance new rights. Rather, they rely on existing rights (as confirmed and developed in practice) recognized by the international community, and apply them to the specific question of housing and property restitution as one form of restorative justice. These underlying international human rights and humanitarian standards are integrated into the Draft Principles and are also further elaborated on in the draft commentary (E/CN.4/Sub.2/2004/22/Add.1).

17. In particular, the Draft Principles reflect human rights and humanitarian principles enshrined in the Universal Declaration of Human Rights,¹² the International Covenant on Economic, Social and Cultural Rights,¹³ the International Covenant on Civil and Political Rights,¹⁴ the Geneva Convention relative to the Protection of Civilian Persons in Time of War,¹⁵ and the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).¹⁶ These Draft Principles also reflect other relevant international standards, in particular, the Guiding Principles on Internal Displacement¹⁷ and the Draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law.¹⁸

18. In addition, the Draft Principles incorporate some of the most useful provisions from various pre-existing national restitution policies and programmes, including those developed for Bosnia and Herzegovina,¹⁹ Cambodia,²⁰ Cyprus,²¹ Guatemala,²² Kosovo,²³ South Africa²⁴ and Rwanda.²⁵ The Draft Principles also incorporate lessons learned, and draw on some of the best practices displayed in recent efforts at restitution in post-conflict situations.

19. The Draft Principles are meant to inform the development of restitution policies and programmes at the national and international level. Since they are rooted in universally applicable international human rights and humanitarian law, they should be seen as universal principles that express basic human rights guarantees which must be recognized. It is hoped that, eventually, upon further revision and consultation, the Draft Principles can be adopted by the Sub-Commission as well as by other relevant United Nations bodies. Doing so would be an important step towards ensuring that all restitution strategies, policies and programmes, as implemented at both the national and international level, reflect international human rights and humanitarian law and standards.

20. The Draft Principles have been organized into seven sections. Section I addresses articulate key universal principles which provide the foundation on which all subsequent provisions are premised. Section II addresses rights necessary to ensuring protection from

displacement. Section III deals specifically with protecting the rights of refugees and displaced persons, including the right to safe, voluntary and dignified return and the right to a remedy in cases of human rights violation. Section IV attends to the specific question of housing and property restitution, and outlines precise policy guidelines in this regard. Section V provides guidance on strengthening restitution procedures, institutions, mechanisms and legal frameworks in order to facilitate the restitution process. Section VI examines the role of international organizations, and Section VII deals with how the Draft Principles shall be interpreted.

21. These Draft Principles are also accompanied by a draft commentary (E/CN.4/Sub.2/2004/22/Add.1). The draft commentary is meant to guide the interpretation of the Draft Principles, as well as to explicitly identify the international legal basis for the standards articulated in the Draft Principles. The draft commentary should be seen as an integral component of the Draft Principles, which will continue to evolve as the Draft Principles themselves evolve.

Annex

DRAFT PRINCIPLES ON HOUSING AND PROPERTY RESTITUTION FOR REFUGEES AND DISPLACED PERSONS

Preamble

Recalling the universal, indivisible and interdependent and interrelated human rights standards enshrined in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights,

Recognizing the right of all persons to be protected from forced displacement, forced eviction and other violations of their human rights which result in the arbitrary or unlawful deprivation of their housing, property, or land,

Recognizing further the often precarious and uncertain living situation of the millions of refugees and displaced persons worldwide and their right to safe, voluntary and dignified return to their original homes and lands,

Welcoming the many national and international institutions that have been established in recent years to ensure the restitution rights of refugees and displaced persons,

Welcoming also the many international standards, principles and guidelines that have recognized and reaffirmed the right to housing and property restitution,

Underscoring the right of all persons to be protected from discrimination and violence at all points in the displacement cycle,

Reaffirming the importance of carefully monitoring conflict situations and providing adequate and prompt responses to mass displacements and refugee flows, including humanitarian aid and technical support,

Convinced that the right to housing and property restitution is a key component of post-conflict resolution and peace-building and that the careful monitoring of restitution programmes, on the part of international organizations and affected States, is indispensable to ensuring their effective implementation,

Resolved to protect human rights, including the right to housing and property restitution for refugees and displaced persons.

Section I. The right to housing and property restitution

1. The right to housing and property restitution

1.1 All refugees and displaced persons have the right to have restored to them housing and property of which they were deprived during the course of displacement, or to be compensated for any property that cannot be restored to them.

2. The right to non-discrimination

2.1 All persons have the right to non-discrimination on the basis of race, colour, gender, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, marital status, sexual orientation, age, disability, property, birth, or on any other status.

2.2 States shall ensure that such discrimination is prohibited as a matter of national law and that all persons have access to courts, including administrative bodies, and are considered equal before the law.

3. Equality between men and women

3.1 States shall undertake to ensure the equal right of men and women to the enjoyment of all the rights, in law and practice, articulated in the present Draft Principles.

3.2 States shall ensure the equal right of men and women to housing and property restitution. In particular, States shall ensure the equal right of men and women to safe, voluntary and dignified return; security of tenure; property ownership; inheritance; as well as the use, control of and access to housing, land and property.

3.3 States shall ensure that restitution programmes, policies and practices ensure that joint titles are issued to both the male and female heads of the household as an explicit component of the restitution process.

Section II. Protection from displacement

4. The right to be free from forced eviction

4.1 All persons have the right to be protected from arbitrary, unlawful or other forced eviction from their homes and/or land which they occupy, defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection (hereinafter “forced eviction”).

4.2 States shall incorporate protections against forced evictions into domestic legislation, consistent with international standards, and shall extend these protections to all persons within their jurisdiction. States shall take steps to ensure that persons are not subjected to forced eviction by either State or non-State actors. States shall also ensure that individuals, corporations and other entities within their legal jurisdiction refrain from carrying out or otherwise participating in forced evictions, whether within the country or abroad.

4.3 States shall ensure that, in cases where lawful evictions (evictions consistent with international standards, hereinafter “evictions”) are deemed justifiable and unavoidable, evictions are carried out in a manner which is compatible with international human rights standards, including principles of non-discrimination, reasonableness and proportionality. States shall also ensure that persons subjected to eviction do not become homeless as a result of the eviction, that all legal recourses and remedies are made available to them, and that they are given an opportunity for genuine consultation throughout eviction processes.

4.4 Forced eviction, demolition of houses and agricultural areas for the production of foodstuffs, and the arbitrary confiscation or expropriation of land as a punitive measure or as a strategy of war are prohibited. Private property must be respected and cannot be confiscated by a military authority over the territory of a hostile State.

5. The right to privacy and respect for the home

5.1 All persons have the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home. States shall extend this protection to all persons within their jurisdiction, and shall take steps to ensure that the right to privacy and respect for the home is not violated by either State or non-State actors. States shall also ensure that individuals and other entities within their legal jurisdiction refrain from violating the right to privacy and respect for the home, whether within the country or abroad.

6. The right to be free from the arbitrary deprivation of one's property

6.1 All persons have the right to the use and peaceful enjoyment of their property. The law may only subordinate the use and enjoyment of property to the interest of society and with due process protections.

6.2 No one shall be arbitrarily or unlawfully deprived of their housing or property. This protection shall extend to individual housing and property, communal housing and property, as well as to lands traditionally held or used by indigenous communities.

7. The right to adequate housing

7.1 All persons have the right to adequate housing. The right to adequate housing entails, inter alia, the right to live in security, peace and dignity.

7.2 All persons have the right to a housing situation which meets certain basic requirements necessary for the sustainable enjoyment of this and other human rights. These requirements include security of tenure, availability of materials, services, facilities and infrastructure, affordability, habitability, accessibility, adequate location and cultural adequacy.

7.3 States shall adopt special measures aimed at alleviating the situation of persons living in unfavourable housing conditions, including refugees and other displaced persons.

8. The right to freedom of movement and to choose one's residence

8.1 All persons have the right to freedom of movement and freedom 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.

Section III. Protecting the rights of refugees and displaced persons

9. The right to safe, voluntary and dignified return

9.1 All refugees and displaced persons have the right to voluntarily return to their former homes, lands or places of origin, in safety and dignity.

9.2 States have the primary responsibility to establish conditions, as well as provide the means, which allow refugees and displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to establish themselves voluntarily in another part of the country. States shall facilitate the voluntary reintegration of returned or relocated refugees and displaced persons.

9.3 Special efforts should be made to ensure the full participation of refugees and displaced persons in the planning and management of their return, voluntary repatriation and reintegration. States shall ensure that particular attention is given to ensure that indigenous peoples, racial and ethnic minorities, women, the elderly and children are represented and included in decision-making processes.

9.4 No one shall be forced, or otherwise coerced, to return to their former homes, lands or places of origin.

9.5 States shall ensure that those refugees and displaced persons who choose not to return to their former homes, lands or places of origin are provided with all assistance necessary to ensure them an adequate standard of living, including the realization of their right to adequate housing.

9.6 States, facilitated by the international community, shall ensure the flow of accurate and objective information necessary for refugees and displaced persons to make informed judgements about local conditions for return.

10. The right to a remedy for human rights violations

10.1 Victims of violations of international human rights and humanitarian law, including victims of forced eviction and forced displacement, have a right to a remedy. The right to a remedy includes, inter alia, reparation for harm suffered.

10.2 States shall ensure that victims of violations of international human rights and humanitarian law, including victims of forced eviction and forced displacement, are afforded adequate, effective and prompt reparation intended to promote justice by redressing these violations. Reparation should be proportional to the gravity of the violations and the harm suffered.

10.3 States shall endeavour to provide restitution, whenever possible and unless the victim chooses otherwise, in order to restore the victim to their original situation (status quo ante) before the violations of international human rights or humanitarian law occurred.

Section IV. Ensuring the right to housing and property restitution

11. Adequate consultation and representation in decision-making

11.1 States shall ensure that all aspects of the restitution processes are carried out in full consultation and participation with the affected persons, groups and communities. States shall take into account any alternative plans or proposals submitted by affected persons, groups and communities.

11.2 All refugees and displaced persons have the right to participate in decision-making concerning the design, implementation and supervision of restitution programmes. States shall ensure that particular attention is given to ensure that indigenous peoples, racial and ethnic minorities, women, the elderly and children are represented and included in decision-making processes.

12. Housing and property records and documentation

12.1 States shall endeavour to establish or re-establish national multi-purpose cadastral systems for the registration of housing, land and property as an integral component of any restitution programme. In particular, any judicial or quasi-judicial pronouncement regarding the rightful ownership of property shall be accompanied by the official registration of that property according to relevant national procedures. In situations where such cadastral systems are already developed, States shall take special measures to ensure that these existing systems are not destroyed in times of conflict or post-conflict.

12.2 States should seek to collect information relevant to facilitating restitution processes, for example, by including housing and property restitution protections in registration procedures for refugees and displaced persons. Such information should be sought at all points in the displacement cycle, including at the time of flight.

12.3 States shall not recognize as valid any illegal property transaction, including any transfer that was made under duress, in exchange for exit permission or documents, or which was otherwise coerced or forced.

13. The rights of tenants and other non-owners

13.1 States shall ensure that the rights of tenants, social occupancy rights holders and other legitimate occupants or users of housing, land or property are recognized within restitution programmes. States shall ensure that such persons are able to return to and repossess and use their homes and/or lands on an equal basis with others possessing restitution rights.

14. Ensuring the rights of secondary occupants

14.1 States shall ensure the rights of secondary occupants who are equally affected by displacement and in need of accommodation and/or land to be protected against forced eviction. Secondary occupants are persons who take up residence in a home after its rightful occupants have fled due, inter alia, to forced displacement, forced eviction, violence or threat of violence, and natural or human-made disasters.

14.2 The legal protections extended to secondary occupants should not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the housing and property in question.

14.3 States shall ensure that, in cases where evictions of such secondary occupants are deemed justifiable and unavoidable, evictions are carried out in a manner which is compatible with international human rights standards, so that secondary occupants are afforded full procedural fairness, including an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress.

14.4 States shall, in cases where evictions of secondary occupants are deemed justifiable and unavoidable, take special measures to protect secondary occupants from homelessness and other violations of the right to adequate housing. In this regard, States shall undertake all efforts to identify alternative housing and/or land for such occupants as a means to facilitate the recovery/restitution of homes and properties of refugees and displaced persons.

15. Compensation

15.1 All refugees and displaced persons have the right to just and fair compensation as an integral component of restitution processes. Compensation shall be given in cases where housing and property restitution is not possible. In some situations, however, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.

15.2 States shall ensure that the remedy of compensation shall 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.

Section V. Strengthening restitution procedures, institutions, mechanisms and legal frameworks

16. Compatibility with international human rights and humanitarian law

16.1 All restitution policies and strategies, as well as institutions, mechanisms, procedures and programmes related to the right to restitution shall be fully consistent and compatible with international human rights and humanitarian law and standards, as well as with regional instruments.

17. National procedures, institutions and mechanisms

17.1 States shall establish and support equitable, timely, transparent and non-discriminatory institutions, procedures and mechanisms to assess and enforce housing and property restitution claims. Whenever possible, such institutions, procedures and mechanisms should be established directly within peace settlements and voluntary repatriation agreements. In cases where existing institutions and mechanisms would be able to adequately address these issues, adequate resources shall be made available to facilitate restitution.

17.2 States shall establish administrative, legislative and judicial measures and procedures to facilitate the restitution process. All relevant agencies shall be provided with adequate financial and human resources to successfully complete their work.

17.3 States shall establish institutional guidelines to ensure the effectiveness of all relevant institutions, procedures and mechanisms, including guidelines pertaining to institutional organization, staff training and caseloads, investigation and complaints procedures, verification of property ownership or other property rights, as well as decision-making, enforcement and appeals mechanisms. States may choose to integrate traditional dispute resolution mechanisms into this process, as long as these are in accordance with international human rights law and principles.

18. Accessibility of claims procedures

18.1 Claims processing centres and offices shall be established throughout affected areas where potential claimants currently reside, or mobile units should be established in order to ensure accessibility to potential claimants.

18.2 States shall ensure that all aspects of the restitution claims process, including appeals procedures, are simple and equitable, and free of charge. In particular, claims forms should be developed which are simple and easy to understand and use, and are available in the first language or languages of the groups affected. Counsellors should be made available to assist persons in filling out and filing any necessary forms. Single women shall not be discriminated against in this process.

18.3 Persons needing special assistance, including illiterate and disabled persons, shall be provided with such special assistance in order to ensure that they are not denied access to restitution claims processes.

18.4 States shall ensure that affected persons are made aware of the restitution process, and that information about this process is made readily available, and in easy to understand layperson's language.

19. Legislative measures

19.1 States shall ensure the right to housing and property restitution of refugees and displaced persons as a matter of law through all necessary legislative means, including through the adoption, amendment, reform, or repeal of relevant laws, regulations or practices. States should develop a legal framework for securing restitution which is clear, consistent and, whenever possible, consolidated in a single law.

19.2 States shall ensure that all relevant law or laws clearly delineate all persons and/or affected groups that are legally entitled to the restitution of their homes, lands and properties, in particular, refugees and displaced persons.

19.3 National legislation related to restitution shall be fully consistent internally, as well as fully compatible with pre-existing relevant agreements, such as peace agreements, voluntary repatriation agreements, etc., insofar as these agreements are themselves compatible with international human rights law and international humanitarian law.

20. Prohibition of arbitrary and discriminatory laws

20.1 States shall adopt no law which unduly prejudices the restitution process, in particular arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.

20.2 States shall reverse the application of unjust or arbitrary laws, and of laws which otherwise have discriminatory effect, and shall take immediate steps to repeal such laws.

20.3 States shall ensure that all national policies related to the right to restitution fully guarantee women's rights to non-discrimination and to equality in both law and practice.

20.4 No one shall be persecuted or punished for making a restitution claim.

21. Provision of legal aid

21.1 Adequate legal aid (if possible, free of charge) shall be provided to those seeking to make a restitution claim.

22. Enforcement

22.1 States shall ensure, through law and other appropriate means, that local and national governments are legally obliged to respect, implement and enforce decisions made by relevant restitution bodies.

22.2 States shall designate specific public agencies to be entrusted with enforcing successful housing and property restitution claims.

Section VI. The role of the international community and of international organizations

23. Responsibility of the international community

23.1 The international community has a responsibility to act in ways which promote and protect the right to housing and property restitution, as well as the right to safe, voluntary and dignified return.

24. International peacekeeping

24.1 The success and effectiveness of housing and property restitution programmes also demands that the international organizations fulfil their peacekeeping obligations, so as to maintain stable domestic situations wherein appropriate restitution programmes may be successfully implemented and enforced, including the protection of property records.

24.1 International organizations should also seek to ensure compatibility between national restitution policies and practices and international human rights and humanitarian standards.

Section VII. Interpretation

25. Interpretation

25.1 These Principles shall not be interpreted as limiting, altering or otherwise prejudicing the provisions of any international human rights or international humanitarian legal instrument or rights consistent with such standards as recognized under national law.

25.2 The accompanying commentary shall constitute the main authoritative interpretation of the Principles.

Notes

¹ In his preliminary report, the Special Rapporteur called for the development of “Universal Principles and Guidelines for Housing and Property Restitution for Refugees and Other Displaced Persons” along with the creation of a “Model Policy on Housing and Property Restitution for Refugees and Other Displaced Persons”. After consultation, however, it was decided that the best course would be to focus on the development of a set of principles on housing and property restitution, which accounts for the change in the proposed title. These principles are meant to inform policy-making at the national level. As such, the principles set forth several specific rights which are to be protected in restitution policies and legislation at the national level.

² The Special Rapporteur would especially like to thank the Centre on Housing Rights and Evictions (COHRE) and the Office of the United Nations High Commissioner for Refugees (UNHCR) for their assistance in the preparation of this report.

³ A/51/482, para. 53.

⁴ For the complete list of topics proposed to the Sub-Commission, see E/CN.4/Sub.2/1997/31, annex.

⁵ Ibid.

⁶ Ibid.

⁷ Statute of the Office of the United Nations High Commissioner for Refugees, chap. 1, para. 1.

⁸ See, for example, conclusion No. 56 (XL)-1989 on durable solutions and refugee protection, adopted by the Executive Committee of UNHCR; and conclusion No. 89 (LI)-2000 on international protection.

⁹ Scott Leckie (ed.), *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons* (Ardsley, New York, Transnational Publishers, 2003).

¹⁰ UNHCR, *Refugees by Numbers* (2003).

¹¹ The Global IDP Project, *Internal Displacement: A Global Overview of Trends and Developments in 2003* (2004).

¹² Article 13 states that everyone has the right to freedom of movement and residence within the borders of each State, and that everyone has the right to leave any country, including his (or her) own, and to return to his (or her) country. Article 17 recognizes that everyone has the right to own property alone as well as in association with others, and that no one shall be arbitrarily deprived of his (or her) property. Article 25 recognizes that everyone has the right to a standard of living adequate for the health and well-being of himself and of his (or her) family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his (or her) control.

¹³ Article 11, paragraph 1, provides that “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” The Committee on Economic, Social and Cultural Rights has also provided important guidance with respect to international legal standards relating more specifically to the right to adequate housing (see general comment No. 4 on the Right to Adequate Housing (E/1992/23)), and the right to be free from forced evictions (see general comment No. 7 on Forced Eviction (E/C.12/1997/4)).

¹⁴ Article 2, paragraph 3, stipulates that States parties shall undertake:

“(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

“(b) To ensure that any person claiming such a remedy shall have his (or her) right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

“(c) To ensure that the competent authorities shall enforce such remedies when granted.”

Article 12, paragraph 1, recognizes that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his (or her) residence (see general comment No. 27 (CCPR/C/21/Rev.1/Add.9)). Article 17, paragraph 1, stipulates that no one shall be subjected to arbitrary or unlawful interference with his (or her) privacy, family, home or correspondence, nor to unlawful attacks on his (or her) honour and reputation (see general comment No. 16 on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation (HRI/GEN/1/Rev.6)).

¹⁵ *United Nations Treaty Series*, vol. 75, p. 287. See, in particular, articles 49, 53, 70 and 134.

¹⁶ *United Nations Treaty Series*, vol. 1125, p. 287. See, in particular, article 17.

¹⁷ E/CN.4/1998/53/Add.2. Principle 29, paragraph 2, provides that “Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.”

¹⁸ E/CN.4/2000/62. In the Draft Basic Principles it is noted that victims of violations of international human rights and humanitarian law, such as victims of forced eviction, have a right to a remedy. The right to a remedy includes, inter alia, reparation for harm suffered. Restitution is a particular form of reparation. The term “restitution” refers to an equitable remedy, or a form of restorative justice, by which persons who suffer loss or injury are returned as far as possible to their original pre-loss or pre-injury position (*status quo ante*). Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship; return to one’s place of residence; and restoration of employment and return of property.

¹⁹ See the General Framework Agreement for Peace in Bosnia and Herzegovina, annex 7: Agreement on Refugees and Displaced Persons (A/50/790-S/1995/999).

²⁰ See the Agreements on a Comprehensive Political Settlement of the Cambodia Conflict, signed at the Paris Conference on Cambodia in 1991 (A/46/608-S/23177).

²¹ See the set of ideas on an overall framework agreement on Cyprus, proposed by the Secretary-General in 1992 (S/24472, annex).

²² See the Agreement on Identity and Rights of Indigenous Peoples (Guatemala Peace Accords) (A/49/882-S/1995/256). See also the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict (A/48/954-S/1994/751, annex I).

²³ See United Nations Mission in Kosovo (UNMIK) Regulation No. 1999/23 on the establishing of the Housing and Property Directorate and the Housing and Property Claims Commission.

²⁴ See South Africa, Restitution of Land Rights Act, 1994 (Act No. 22).

²⁵ See the Arusha Peace Agreement of 4 August 1993.
