



A FRAMEWORK FOR RESOLVING DISPLACEMENT IN MYANMAR

THE UNITED NATIONS 'PINHEIRO
PRINCIPLES' ON HOUSING AND
PROPERTY RESTITUTION FOR
REFUGEES AND DISPLACED PERSONS

March 2017



DISPLACEMENT SOLUTIONS



NORWEGIAN
REFUGEE COUNCIL



A FRAMEWORK FOR RESOLVING DISPLACEMENT IN MYANMAR

THE UNITED NATIONS 'PINHEIRO
PRINCIPLES' ON HOUSING AND
PROPERTY RESTITUTION FOR
REFUGEES AND DISPLACED PERSONS

March 2017



DISPLACEMENT SOLUTIONS



NORWEGIAN
REFUGEE COUNCIL

INTRODUCTION FROM THE NRC MYANMAR COUNTRY DIRECTOR

Housing, land and property rights are fundamental human rights and a global advocacy priority for the Norwegian Refugee Council. The restitution of housing, land and property rights after conflicts and periods of non-democratic governance are fundamental aspects of transitional justice which are essential for the achievement of durable solutions to forced displacement, and to broader concerns of peace, reconciliation and economic prosperity. The NRC Country Office in Myanmar considers it necessary and positive to increase attention to the benefits of establishing specific post-conflict restitution mechanisms that would enable everyone with a restitution claim to have access to an appropriate remedial mechanism.

Article 1(k) of the 15 October 2015 Nationwide Ceasefire Agreement provisions include several references to property rights, while Chapter VI of the 2016 National Land Use Policy includes general guidance on how a restitution process could take place. Moreover, bodies such as the investigation Committee for Confiscated Farmlands and Other Lands have been established to address outstanding restitution claims. A number of INGOs and local NGOs are currently advocating for the protection of the rights of refugees, displaced persons and other individuals affected by arbitrary takings of property in the past. These efforts should be encouraged.

For these reasons, in partnership with Displacement Solutions, the NRC has supported the drafting of this report by international restitution expert Scott Leckie on potential options for the restoration of housing, land and property rights. It is not meant as a prescription, but rather as a tool to enrich and inform an already ongoing important debate which will benefit Myanmar and its people and hopefully contribute to peace and national reconciliation in the long term.

I wish to acknowledge the contribution of the Information, Counselling and Legal Assistance (ICLA) core team (José Arraiza, Victoria Larroche, Sadia Rani, Yi Soe and Zaw Tun) as well as our ICLA field staff (Ei Ei Aung, Flora Ju, Naw Khin Thu, Saw Tar Lay Pwe, Saw Tun Naing, Khin Myat Thu and Paing Thu Soe), our programme team in Yangon (Laura Marshall and Kendra Hughbanks) and advisers in Oslo (Hege Mørk) for their support.



Prasant Naik
Country Director
March 2017

The Principles on housing and property restitution for refugees and displaced persons articulated herein are designed to assist all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence.

- **Principle 1.1** of the Pinheiro Principles

INTRODUCTION

Housing, land and property (HLP) restitution rights are essential elements to peace and reconciliation efforts aiming to fairly and sustainably overcoming situations of forced displacement. The international endorsement in 2005 of the “Principles on Housing and Property Restitution for Refugees and Displaced Persons” by the United Nations now commonly known as the ‘Pinheiro Principles’, are a consolidated global minimum standard on the HLP restitution rights of refugees and displaced persons.¹

The Pinheiro Principles are an authoritative and comprehensive statement of the specific restitution rights of refugees and displaced persons as well as the obligations of governments and other controlling authorities towards populations seeking to return to and reclaim their original homes and lands. They augment the international legal and normative framework by consolidating into one framework existing human rights and legal standards on resolving displacement through the process of restitution.

The Pinheiro Principles lay out a consolidated set of international legal principles designed to ensure that refugees and displaced persons have, in the terminology of Pinheiro Principle 2.1 “the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal”. Such rights do not yet comprehensively exist within Myanmar law, nor have they been reflected adequately in the ongoing peace process between the government and its ethnic armed group negotiating partners, and the Pinheiro Principles can provide a useful guide for addressing restitution issues within these contexts.

Housing, land and property (HLP) restitution rights for refugees and displaced persons are firmly grounded within the core principles of many fields of international law. As a legal concept, of course, restitution has been treated as a central (and often preferred) remedy for violations of legal obligations within many jurisdictions for more than a century.

¹ The official text of the Pinheiro Principles is found within the following United Nations document: The Final Report of the Special Rapporteur on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons (E/CN.4/Sub.2/2005/17 and E/CN.4/Sub.2/2005/17/Add.1).

Innumerable United Nations Security Council and General Assembly resolutions adopted over the past 60 years explicitly address HLP restitution rights.² In recent decades, a range of international human rights bodies and national institutions have reaffirmed the right of all refugees and displaced persons to return freely to their countries and to have restored to them housing, land and property of which they were deprived, or to be compensated for HLP losses that cannot be restored to them. The recognition throughout the international community of the direct links between HLP restitution and peace, stability, reconciliation and economic development has bolstered support for the human rights remedies offered to the displaced by restitution rights, which are now widely viewed as key elements of any constructive peace-building strategy. In recent decades, in post-conflict contexts such as Colombia, Bosnia-Herzegovina, Georgia, Kosovo and Tajikistan; in post-authoritarian countries like South Africa or Iraq; and in post-communist countries including the Czech Republic, Estonia, Germany, Latvia and elsewhere, restitution rights have been recognized, and laws and procedures developed and enforced.

In the process, millions of formerly displaced people have been able to return to repossess and re-inhabit their original homes, lands and properties, or receive just and satisfactory compensation when restitution was materially impossible. While many factors may account for the emergence of these new global standards on HLP restitution rights, perhaps the convergence of national-level restitution programmes, combined with a widening global awareness of the plight of those who have thus far been left behind in the pursuit of restitution rights, were the key driving forces behind the adoption of the Pinheiro Principles.

Importantly, the Pinheiro Principles are designed to provide practical guidance to governing authorities on how best to address the complex legal and technical issues surrounding HLP restitution. In the case of Myanmar, the Pinheiro Principles can assist the government, the military and ethnic actor negotiating partners to find viable and fair ways to address HLP issues within the context of the peace process and within an eventual peace agreement.

Sections II-IV of the Principles (Principles 2-10) reaffirm existing human rights and apply them to the specific question of HLP restitution. Policy-makers, and others involved in the implementation of restitution rights can find guidance in Sections V-VI (Principles 11-22). In these sections, the Principles elaborate upon what governing authorities should do in terms of developing housing, land and property restitution procedures and institutions, and ensuring access to these by all displaced persons. They stress the importance of consultation and participation in decision-making by refugees and displaced persons, and then outline approaches to technical issues of HLP records, the rights of tenants and other non-owners and the question of secondary occupants. Legislative measures, the prohibition of arbitrary and discriminatory laws, the enforcement of restitution decisions and judgments and the issue of compensation, are then explored. Finally, Principle 22 discusses the responsibility of the international community to protect restitution rights.

² See, for instance, the compilation of relevant restitution standards and pronouncements contained in: Scott Leckie, *Housing, Land and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases and Materials*, Cambridge University Press, 2007.

The Principles are inclusive in nature. They apply to all persons that were displaced arbitrarily or unlawfully irrespective of the nature of the displacement and regardless of the circumstances by which the situation of displacement originally occurred. Hence, it is not the underlying reason of the displacement that matters for the Principles to become applicable, but the manner in which the act of dispossession occurred, namely arbitrarily or unlawfully. In the same way that the Principles focus on the procedure rather than the motive, they centre on the resulting situation rather than the status of the individual concerned. It is in this sense, by embracing refugees, IDPs and other similarly situated displaced persons who fled across national borders but who may not meet the legal definition of refugee, that the Principles are inclusive, and of direct and extensive relevance to the situation in Myanmar.

The Principles reaffirm the right to return, but are crucial for the individual right-holder as they shift the focus from a collective right to return to an individual right to restitution and seek to establish a transparent and accountable rights-based rule of law approach. Moreover, the Principles are not only about existing displacement settings, but also about avoiding future displacement scenarios and putting in place a legal framework available for future situations.

According to the Principles neither war, human rights abuses, development projects, nor disasters, are in and of themselves justifiable grounds upon which to legitimize the arbitrary or unlawful acquisition, expropriation or destruction of homes and lands over which refugees and displaced persons continue to retain rights. Grounded firmly in existing international law, policy and best practices, the Principles recognize the fundamental nature of housing, land and property restitution as a key concern of States and the international community, and ultimately as a fundamental feature of long-lasting peace and sustainable development.

Displacement Solutions and the Norwegian Refugee Council encourage all refugees and internally displaced persons from Myanmar to familiarise themselves with the norms found within the Pinheiro Principles and to continually assert their particular HLP restitution rights when seeking to return to their places of habitual residence.

Similarly, we urge all governing authorities in Myanmar to review the Pinheiro Principles and develop methods for ensuring their full implementation for everyone with a restitution claim. Doing so will build the foundations for sustainable reconciliation and peace.

UN ('PINHEIRO') PRINCIPLES ON HOUSING AND PROPERTY RESTITUTION FOR REFUGEES AND DISPLACED PERSONS (2005)³

PREAMBLE

Recognizing that millions of refugees and displaced persons worldwide continue to live in precarious and uncertain situations, and that all refugees and displaced persons have a right to voluntary return, in safety and dignity, to their original or former habitual homes and lands,

Underscoring that voluntary return in safety and dignity must be based on a free, informed, individual choice and that refugees and displaced persons should be provided with complete, objective, up-to-date and accurate information, including on physical, material and legal safety issues in countries or places of origin,

Reaffirming the rights of refugee and displaced women and girls, and recognizing the need to undertake positive measures to ensure that their rights to housing, land and property restitution are guaranteed,

Welcoming the many national and international institutions that have been established in recent years to ensure the restitution rights of refugees and displaced persons, as well as the many national and international laws, standards, policy statements, agreements and guidelines that have recognized and reaffirmed the right to housing, land and property restitution,

Convinced that the right to housing, land and property restitution is essential to the resolution of conflict and to post-conflict peace-building, safe and sustainable return and the establishment of the rule of law, and that careful monitoring of restitution programmes, on the part of international organizations and affected States, is indispensable to ensuring their effective implementation,

Convinced also that the implementation of successful housing, land and property restitution programmes, as a key element of restorative justice, contributes to effectively deterring future situations of displacement and building sustainable peace.

³ See: Final Report of the Special Rapporteur on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons (E/CN.4/Sub.2/2005/17 and E/CN.4/Sub.2/2005/17/Add.1). This document contains the official UN text of the *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, as approved by UN Sub-Commission on the Protection and Promotion of Human Rights in Resolution 2005/21 of 11 August 2005.

SECTION I. SCOPE AND APPLICATION

1. SCOPE AND APPLICATION

1.1 The Principles on housing and property restitution for refugees and displaced persons articulated herein are designed to assist all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence.

1.2 The Principles on housing and property restitution for refugees and displaced persons apply equally to all refugees, internally displaced persons and to other similarly situated displaced persons who fled across national borders but who may not meet the legal definition of refugee (hereinafter “refugees and displaced persons”) who were arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which displacement originally occurred.

SECTION II. THE RIGHT TO HOUSING AND PROPERTY RESTITUTION

2. THE RIGHT TO HOUSING AND PROPERTY RESTITUTION

2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

*Image: Rice paddy, Tanintharyi,
Myanmar by José Arraiza*



SECTION III. OVERARCHING PRINCIPLES

3. THE RIGHT TO NON-DISCRIMINATION

3.1 Everyone has the right to be protected from discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status.

3.2 States shall ensure that *de facto* and *de jure* discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law.

4. THE RIGHT TO EQUALITY BETWEEN MEN AND WOMEN

4.1 States shall ensure the equal right of men and women, and the equal right of boys and girls, to housing, land and property restitution. States shall ensure the equal right of men and women, and the equal right of boys and girls, inter alia, to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.

4.2 States should ensure that housing, land and property restitution programmes, policies and practices recognize the joint ownership rights of both male and female heads of the household as an explicit component of the restitution process, and that restitution programmes, policies and practices reflect a gender-sensitive approach.

4.3 States shall ensure that housing, land and property restitution programmes, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard.

5. THE RIGHT TO BE PROTECTED FROM DISPLACEMENT

5.1 Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.

5.2 States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control.

5.3 States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.

5.4 States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.

6. THE RIGHT TO PRIVACY AND RESPECT FOR THE HOME

6.1 Everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home.

6.2 States shall ensure that everyone is provided with safeguards of due process against arbitrary or unlawful interference with his or her privacy and his or her home.

7. THE RIGHT TO PEACEFUL ENJOYMENT OF POSSESSIONS

7.1 Everyone has the right to the peaceful enjoyment of his or her possessions.

7.2 States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general principles of international law. Whenever possible, the “interest of society” should be read restrictively, so as to mean only a temporary or limited interference with the right to peaceful enjoyment of possessions.

8. THE RIGHT TO ADEQUATE HOUSING

8.1 Everyone has the right to adequate housing.

8.2 States should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.

9. THE RIGHT TO FREEDOM OF MOVEMENT

9.1 Everyone has the right to freedom of movement and the right to choose his or her residence. No one shall be arbitrarily or unlawfully forced to remain within a certain territory, area or region. Similarly, no one shall be arbitrarily or unlawfully forced to leave a certain territory, area or region.

9.2 States shall ensure that freedom of movement and the right to choose one's residence are not subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with international human rights, refugee and humanitarian law and related standards.

SECTION IV. THE RIGHT TO VOLUNTARY RETURN IN SAFETY AND DIGNITY

10. THE RIGHT TO VOLUNTARY RETURN IN SAFETY AND DIGNITY

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

10.2 States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations.

10.3 Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property.

10.4 States should, when necessary, request from other States or international organizations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons.



*Image: Pyartharchaung town,
Tanintharyi, Myanmar
by José Arraiza*

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

11. COMPATIBILITY WITH INTERNATIONAL HUMAN RIGHTS, REFUGEE AND HUMANITARIAN LAW AND RELATED STANDARDS

11.1 States should ensure that all housing, land and property restitution procedures, institutions, mechanisms and legal frameworks are fully compatible with international human rights, refugee and humanitarian law and related standards, and that the right to voluntary return in safety and dignity is recognized therein.

12. NATIONAL PROCEDURES, INSTITUTIONS AND MECHANISMS

12.1 States should establish and support equitable, timely, independent, transparent and non discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims. In cases where existing procedures, institutions and mechanisms can effectively address these issues, adequate financial, human and other resources should be made available to facilitate restitution in a just and timely manner.

12.2 States should ensure that housing, land and property restitution procedures, institutions and mechanisms are age and gender sensitive, and recognize the equal rights of men and women, as well as the equal rights of boys and girls, and reflect the overarching principle of the “best interests of the child”.

12.3 States should take all appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and property restitution process. States should provide all relevant agencies with adequate financial, human and other resources to successfully complete their work in a just and timely manner.

12.4 States should establish guidelines that ensure the effectiveness of all relevant housing, land and property restitution procedures, institutions and mechanisms, including guidelines pertaining to institutional organization, staff training and caseloads, investigation and complaints procedures, verification of property ownership or other rights of possession, as well as decision making, enforcement and appeals mechanisms. States may integrate alternative or informal dispute resolution mechanisms into these processes, insofar as all such mechanisms act in accordance with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.

12.5 Where there has been a general breakdown in the rule of law, or where States are unable to implement the procedures, institutions and mechanisms necessary to facilitate the housing, land and property restitution process in a just and timely manner, States should request the technical assistance and cooperation of relevant international agencies in order to establish provisional regimes for providing refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective restitution remedies.

12.6 States should include housing, land and property restitution procedures, institutions and mechanisms in peace agreements and voluntary repatriation agreements. Peace agreements should include specific undertakings by the parties to appropriately address any housing, land and property issues that require remedies under international law or threaten to undermine the peace process if left unaddressed, while demonstrably prioritizing the right to restitution as the preferred remedy in this regard.

13. ACCESSIBILITY OF RESTITUTION CLAIMS PROCEDURES

13.1 Everyone who has been arbitrarily or unlawfully deprived of housing, land and/or property should be able to submit a claim for restitution and/or compensation to an independent and impartial body, to have a determination made on their claim and to receive notice of such determination. States should not establish any preconditions for filing a restitution claim.

13.2 States should ensure that all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge, and are age and gender sensitive. States should adopt positive measures to ensure that women are able to participate on a fully equal basis in this process.

13.3 States should ensure that separated and unaccompanied children are able to participate and are fully represented in the restitution claims process, and that any decision in relation to the restitution claim of separated and unaccompanied children is in compliance with the overarching principle of the “best interests of the child”.

13.4 States should ensure that the restitution claims process is accessible for refugees and other displaced persons regardless of their place of residence during the period of displacement, including in countries of origin, countries of asylum or countries to which they have fled. States should ensure that all affected persons are made aware of the restitution claims process, and that information about this process is made readily available, including in countries of origin, countries of asylum or countries to which they have fled.

13.5 States should seek to establish restitution claims-processing centres and offices throughout affected areas where potential claimants currently reside. In order to facilitate the greatest access to those affected, it should be possible to submit restitution claims by post or by proxy, as well as in person. States should also consider establishing mobile units in order to ensure accessibility to all potential claimants.

13.6 States should ensure that users of housing, land and/or property, including tenants, have the right to participate in the restitution claims process, including through the filing of collective restitution claims.

13.7 States should develop restitution claims forms that are simple and easy to understand and use and make them available in the main language or languages of the groups affected. Competent assistance should be made available to help persons complete and file any necessary restitution claims forms, and such assistance should be provided in a manner that is age and gender sensitive.

13.8 Where restitution claims forms cannot be sufficiently simplified owing to the complexities inherent in the claims process, States should engage qualified persons to interview potential claimants in confidence, and in a manner that is age and gender sensitive, in order to solicit the necessary information and complete the restitution claims forms on their behalf.

13.9 States should establish a clear time period for filing restitution claims. This information should be widely disseminated and should be sufficiently long to ensure that all those affected have an adequate opportunity to file a restitution claim, bearing in mind the number of potential claimants, potential difficulties of collecting information and access, the extent of displacement, the accessibility of the process for potentially disadvantaged groups and vulnerable individuals, and the political situation in the country or region of origin.

13.10 States should ensure that persons needing special assistance, including illiterate and disabled persons, are provided with such assistance in order to ensure that they are not denied access to the restitution claims process.

13.11 States should ensure that adequate legal aid is provided, if possible free of charge, to those seeking to make a restitution claim. While legal aid may be provided by either governmental or non-governmental sources (whether national or international), such legal aid should meet adequate standards of quality, non-discrimination, fairness and impartiality so as not to prejudice the restitution claims process.

13.12 States should ensure that no one is persecuted or punished for making a restitution claim.

14. ADEQUATE CONSULTATION AND PARTICIPATION IN DECISION-MAKING

14.1 States and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution programmes are carried out with adequate consultation and participation with the affected persons, groups and communities.

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

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

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

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

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

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

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

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

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

16. THE RIGHTS OF TENANTS AND OTHER NON-OWNERS

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

17. SECONDARY OCCUPANTS

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

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

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

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

18. LEGISLATIVE MEASURES

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

18.2 States should ensure that all relevant laws clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land and property, most notably refugees and displaced persons. Subsidiary claimants should similarly be recognized, including resident family members at the time of displacement, spouses, domestic partners, dependents, legal heirs and others who should be entitled to claim on the same basis as primary claimants.

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

19. PROHIBITION OF ARBITRARY AND DISCRIMINATORY LAWS

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

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

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

20. ENFORCEMENT OF RESTITUTION DECISIONS AND JUDGEMENTS

20.1 States should designate specific public agencies to be entrusted with enforcing housing, land and property restitution decisions and judgements.

20.2 States should ensure, through law and other appropriate means, that local and national authorities are legally obligated to respect, implement and enforce decisions and judgements made by relevant bodies regarding housing, land and property restitution.

20.3 States should adopt specific measures to prevent the public obstruction of enforcement of housing, land and property restitution decisions and judgements. Threats or attacks against officials and agencies carrying out restitution programmes should be fully investigated and prosecuted.

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

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

21. COMPENSATION

21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.

21.2 States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.



Image: Hpa-an, Karen State, Myanmar by José Arraiza

SECTION VI. THE ROLE OF THE INTERNATIONAL COMMUNITY, INCLUDING INTERNATIONAL ORGANIZATIONS

22. RESPONSIBILITY OF THE INTERNATIONAL COMMUNITY

22.1 The international community should promote and protect the right to housing, land and property restitution, as well as the right to voluntary return in safety and dignity.

22.2 International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition against unlawful or arbitrary displacement and, in particular, the prohibition under international human rights law and related standards on the practice of forced evictions.

22.3 International organizations should work with national Governments and share expertise on the development of national housing, land and property restitution policies and programmes and help ensure their compatibility with international human rights, refugee and humanitarian law and related standards. International organizations should also support the monitoring of their implementation.

22.4 International organizations, including the United Nations, should strive to ensure that peace agreements and voluntary repatriation agreements contain provisions related to housing, land and property restitution, including through the establishment of national procedures, institutions, mechanisms and legal frameworks.

22.5 International peace operations, in pursuing their overall mandate, should help to maintain a secure and stable environment wherein appropriate housing, land and property restitution policies and programmes may be successfully implemented and enforced.

22.6 International peace operations, depending on the mission context, should be requested to support the protection of the right to housing, land and property restitution, including through the enforcement of restitution decisions and judgements. Members of the Security Council should consider including this role in the mandate of peace operations.

22.7 International organizations and peace operations should avoid occupying, renting or purchasing housing, land and property over which the rights holder does not currently have access or control, and should require that their staff do the same. Similarly, international organizations and peace operations should ensure that bodies or processes under their control or supervision do not obstruct, directly or indirectly, the restitution of housing, land and property.

SECTION VII. INTERPRETATION

23. INTERPRETATION

23.1 The Principles on housing and property restitution for refugees and displaced persons shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights, refugee and humanitarian law and related standards, or rights consistent with these laws and standards as recognized under national law.

Designed in Australia by



arteriastudio.com.au



WWW.DISPLACEMENTSOLUTIONS.ORG



WWW.NRC.NO



WWW.UNHCR.ORG

This report was made possible with the financial support of UNHCR.

Disclaimer: All reasonable precautions have been taken by the United Nations High Commissioner for Refugees (UNHCR) to verify the information contained in this publication. However, the published material is being distributed without warranty of any kind, either express or implied. The responsibility for the interpretation and use of the material lies with the reader. In no event shall the UNHCR be liable for damages arising from its use.