

Action Sheet 12

Loss or arbitrary deprivation of land and property

Key message:

1. Situations of displacement, whether caused by conflict or disaster, often result in loss or destruction of personal property, including homes, land and livestock. Individuals have the right to have restored to them or, if this is not possible, to receive fair compensation for any property of which they have unlawfully been deprived, and for this to occur at the earliest opportunity. Deprivation of property is not only a violation of rights in and of itself but also exposes internally displaced persons to a range of other protection risks. Moreover, if not effectively addressed, disputes over property and land issues can become a source of conflict and further displacement. **This action sheet** provides guidance on ways to address matters related to loss of land and property during all stages of the displacement, with particular focus on restitution and compensation.

Loss of land, homes and property in the context of internal displacement

2. Displacement separates people from their property as they are forced to abandon their homes and also often their lands, livestock and other possessions, to seek safety from conflict, violence and other violations of their rights in other parts of their country. However, the link between displacement and loss of property often is more direct, with displacement caused by or resulting in unlawful deprivation of property. In fact, disputes over resources such as land constitute one of the main causes of conflict and displacement in many countries and frequently pose a major obstacle to peace, return and reconciliation. In some cases, the systematic destruction of property is employed as a method of warfare aimed at punishing, terrorizing or forcing the flight of particular communities and permanently altering the demographic (ethnic or religious) character of a community or even country. Property left behind by displaced persons may be taken over by combatants for personal gain or be systematically distributed to them in lieu of payment for taking up arms. Arbitrary deprivation of property can also take place by more organized means, including: discriminatory laws and practices, unjustified confiscation of land and property, and unlawful evictions conducted under the ambit of urban or agricultural reform or restructuring.

Is deprivation of property always unlawful?

Loss or seizure of property does not always amount to arbitrary deprivation as the authorities may have a legitimate public interest in controlling, regulating or even seizing private or communal property. Such action must however meet certain safeguards. It must have a basis in law, have a legitimate aim (such as protecting public interests, e.g. safety) and be proportionate to this aim. Any such measures should be undertaken in accordance with fair and transparent procedures, with just compensation provided. Where these safeguards are not met, the seizure of property, even if it is in line with local or national law, may nevertheless be considered unlawful under international human rights law.

The protection implications of loss of land, homes and property

3. Loss of access to one's land, homes and property is a violation of the right to property. In addition, it typically exposes individuals to a range of protection risks, which can have serious consequences for their lives, health and well-being. Without access to their land, housing and property, people may be deprived of their main source of physical and socio-economic security, including access to shelter, food and often also to livelihood, both directly, in the case of those engaged in agricultural activity, and in terms of the impact that loss of assets can have on access to credit. Loss of a fixed residence also may jeopardize peoples' access to social services, such as health care and education, and render them vulnerable to further abuse, such as economic and sexual exploitation, extortion and harassment.
4. Women and children, in particular girls, are disproportionately affected by loss of land, housing and property. Discriminatory laws and practices often prevent women and girls from owning, leasing or renting and inheriting property; in case of divorce or the death of their husbands, fathers or other male relatives, women and girls may be forced to leave their homes, coerced into marriage or subjected to abusive ritual practices. In the context of displacement, which so often results in the separation of families and a surge in the number of women-headed households, such discrimination may render it impossible for displaced women or girl-children to reclaim or repossess their homes in the absence of male relatives. Lack of shelter and access to land and thus to a sustainable livelihood heightens women and children's exposure to specific risks including rape, forced prostitution and trafficking.

Access to remedies: restitution or compensation

5. Persons that have been arbitrarily deprived of their property are entitled to have such property – including not only land and homes but also livestock, crops and personal items – restored or to receive fair and adequate compensation for this. In general, **restitution** - i.e. the return of lost property to its rightful owner - is the preferred remedy as it both redresses the wrong done and facilitates peoples’ return to their original homes, if they so wish. It is important to note that restitution is not a right restricted to those with legal title or claim to property, but also extends to other forms of ownership or title, such as tenancy, occupancy or user rights in collective or communal property.
6. **Compensation**, in cash or in kind, can be given in lieu of restitution in cases where restitution is either impossible or impracticable, for instance for reasons of security or public interest, including safety. In large cases of displacement, the resources required for fair compensation are not always available in a timely manner. Moreover, even when receiving compensation, in many cases IDPs have remained displaced, or experienced secondary displacement, owing to difficulties in integrating and securing a livelihood in areas of relocation. While calculation of compensation may often prove complex, particularly where value of property has changed during the period of displacement, efforts must be made to ensure that it is adequate, fair and just. It is important to note, however, that a generous compensation may be seen as being of little value where land is scarce or where it has had important symbolic, cultural or religious meaning for the internally displaced, as often is the case.

Challenges to property restitution and/or compensation

7. Land, housing and property issues are often complex, in particular where disputes over land and other resources are among the causes of conflict or displacement and deliberate deprivation of property has been used as a method of war or ethnic cleansing. A further complicating factor is that the homes and property of IDPs may be occupied by IDPs displaced from another area, who have been deprived of their own property and also require a remedy. Table X lists some common obstacles to successful property restitution and compensation initiatives that may need to be addressed.

Table X: Common obstacles to property restitution or compensation

Type	Frequent obstacles
Physical obstacles	<ul style="list-style-type: none"> – Lack of safety and security in areas of origin, for instance due to ongoing violence and/or the presence of landmines or unexploded ordnances on land and roads/paths. – Secondary occupation of land and homes by other persons (perhaps displaced themselves) or persons in authority, in some cases combatants or members of rival ethnic, national or religious groups. Such occupations may either be spontaneous or be instigated by legitimate or de facto authorities. – Damage and/or destruction of land, housing and property, whether as collateral damage or caused by deliberate attack, often accompanied by lack of available material, tools and expertise for repair and reconstruction. In some cases disputes over boundaries of land may arise upon return, in particular where landmarks have been destroyed or removed.
Legal obstacles	<ul style="list-style-type: none"> – Discriminatory laws, rules and regulations which target certain ethnic or religious groups and restrict their ability to reclaim lost property. – Gender or age discrimination rooted in discriminatory laws or cultural beliefs and practices, which prevent women from owning, inheriting, controlling or making use of property, including upon divorce or upon the death of their husbands, fathers or other male relatives. – Inappropriate use of abandonment laws and regulations, resulting in seizure of vacated property after certain, often extremely short, periods of time. Such laws have been abused to punish people for fleeing or to prevent people of certain ethnic, religious or other groups from returning and reclaiming property, thereby consolidating practices of deliberate displacement, including “ethnic cleansing”. Where abandonment, regardless of its duration, is the result of armed conflict, violence, discrimination or other violations of rights, it should not be held against the owner or result in loss of rights. – Forced or fraudulent housing sales or rental ‘contracts’ made under duress prior to or at the time of flight, often without substantial or real compensation. – Existence of complex and parallel systems of ownership based on legal, traditional or cultural norms and values. These can take different forms, ranging from legal title or tenancy/occupancy rights in socially-owned properties, to permanent or temporary user-rights in extended family-, collectively- or traditionally-owned

	properties. These often discriminate heavily against women and girls. At the same time, privatisation and establishment of title where such have not existed before, also risk discriminating and marginalising women and minority groups.
Political / Economic obstacles	<ul style="list-style-type: none"> – Political resistance and ongoing conflict over limited resources, both political and economic including, in particular, land and natural resources. – Privatization or re-allocation of socially or publicly-owned land or housing immediately prior to, during or after cessation of conflict, without regard to existing tenancy and/or occupancy rights, and often with the aim to secure political support or consolidate practices of deliberate displacement such as “ethnic cleansing”. Privatization, which is often encouraged by structural adjustment programs recommended by international development actors, sometimes fails to take into account the importance of informal titles and the rights of women, children and indigenous people to title. – Lack of resources to pursue property claims, including lack of financial, legal and social support of individuals, particular in the case of women and children who have been separated from their families and face discriminatory property legislation, to pursue legal claims. – Sharp increase or decrease in value of land, housing and property, making fair restitution and/or compensation difficult to achieve or subject to abuse, e.g. in basing compensation on pre-conflict prices, which would no longer be adequate to enable access to comparable housing and land.
Institutional / administrative obstacles	<ul style="list-style-type: none"> – Lack of documentation and/or lack or destruction of cadastral or other title records. In some cases people may never have possessed documents attesting to title or tenancy rights or these may have been destroyed in the context (e.g. conflict or disaster) or lost or confiscated in course of displacement, in some cases seized by opportunistic combatants or members of opposing ethnic, religious or other groups. – Absence of or corrupt judicial, quasi-judicial or administrative systems or other dispute resolution systems, capable of deciding, adjudicating or otherwise resolving in a fair manner competing claims over property. – Lack of enforcement mechanisms, including absence, inability or unwillingness of police and law enforcement authorities to respect and enforce decisions regarding restitution of property.
Cultural obstacles	<ul style="list-style-type: none"> – Discrimination and harmful traditional norms and practices, often disproportionately affecting women, including prohibitions for women to inherit property, requirements of celibacy or of marriage to relatives of deceased husband, and/or imposition of ‘cleansing’ rituals, whereby widows are forced to have sexual intercourse with strangers or other men chosen by the family.

Role and responsibility of the State

8. States have an obligation to prevent and refrain from unlawfully depriving individuals and communities of their rightful property, including land, homes, livestock, crops, funds and personal items. The State should furthermore ensure that where people have been deprived of their property, whether as a result of actions by the State, non-state actors or private individuals, adequate avenues for redress are put in place. This can be done through existing judicial or administrative mechanisms or through the establishment of specialized restitution and/or compensation mechanisms.
9. Restitution and/or compensation **mechanisms** can take different forms. These include existing judicial or administrative bodies, such as national courts, ministries or property commissions; traditional, cultural or religious dispute resolution systems; and good offices or other mediating bodies. Where these are non-existent, mal-functioning or over-burdened in situations of large-scale displacement, special land, housing and/or property claims commissions sometimes have been established.
10. Regardless of the form that they take, restitution and/or compensation mechanisms should meet certain minimum standards in all cases, including:
 - be independent and impartial.
 - respect the right to due process, including the right to free legal aid and appeal to a higher body.
 - be accessible to all displaced persons and returnees, regardless of their place of residence during displacement; be free of charge; and enable submission of claims in all relevant languages.
 - not be prejudiced by or promote the return or non-return of the internally displaced.
 - Available remedies should include both restitution as well as fair and equitable compensation.

- Decisions should be respected by political, judicial and administrative authorities and be effectively enforced by law enforcement authorities, while at the same time taking into account the rights of secondary occupants and evictees, for instance through provision of alternative land or housing.
- Their mandate should cover all residential sectors and address different types of land, housing and property rights, extending not only to those having legal title to property, but also to tenants, cooperative dwellers, slum or squatter dwellers, informal sector dwellers without secure tenure.

The role of human rights and humanitarian actors

11. Safeguarding of land, housing and property rights should form part of a protection strategy, both during displacement as well as part of durable solutions to displacement. Land, housing and property rights are integral to any attempt at restoring justice and the rule of law in post-conflict settings and a failure to address them may pose a major impediment to safe, sustainable and dignified return. In addition, being able to exercise rights to land, housing and property during displacement may be essential to displaced persons' livelihood, limit their dependency on humanitarian assistance, and in some cases, particularly for women and children, prevent their exposure to further violations.

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Assessment and analysis	<ul style="list-style-type: none"> – Support the undertaking of land, housing and property rights assessments, in an age and gender-sensitive manner, including (i) analysis of the different legal, cultural or traditional systems of ownership and assignment of land, (ii) availability of cadastral records and registration systems, and (iii) assessment of existing laws (see below: Legislation) and mechanisms for restitution and/or compensation.
Community consultations & mobilisation	<ul style="list-style-type: none"> – Encourage, facilitate and support national consultations, including all relevant stakeholders, including certainly displaced persons themselves, aimed at identifying challenges, obstacles and most importantly, fair, effective and acceptable solutions to land, housing and property related claims.
Legislation	<ul style="list-style-type: none"> – Encourage, support or undertake review of national laws, regulations, policies, procedures and practices, including traditional and cultural practices, to ensure that they adequately protect the equal right of women, girls, boys and men to land, housing and property, and that they provide for fair and effective remedies, including restitution and/or compensation as appropriate. Based on the outcome of this analysis, recommend and advocate with relevant authorities for amendment, repeal or passing of new legislation. – Encourage national authorities to adhere to bring their property legislation into line with international law and standards, including the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons. – Ensure that laws, policies and procedures do not discriminate against women, children or older people, and that they protect their rights to housing, land and property.
Registration	<ul style="list-style-type: none"> – Encourage in those cases where registration processes are put in place for IDPs, that these include collection of information about land, housing and other property owned or used by individuals and families at the time of flight, in order to facilitate property restitution and/or compensation.
Capacity building	<ul style="list-style-type: none"> – Support the establishment and/or strengthening of independent and impartial judicial, quasi-judicial and administrative systems to effectively address land, housing and property claims. Where such systems are non-existent, mal-functioning or over-burdened, it may be appropriate to encourage and support the establishment of an independent land, housing and property commission with a mandate to receive and adjudicate property-related claims. Any mechanism and procedures for review and resolution of property claims must meet the safeguards noted above.
Training	<ul style="list-style-type: none"> – Support, facilitate or undertake training programmes in human rights, including housing, land and property rights, for displaced persons, national and local authorities, national human rights commission, NGOs and civil society organisations. This may include providing training to community leaders to equip them with information and knowledge on property rights to then impart within

	their displacement communities.
Material assistance	<ul style="list-style-type: none"> – Provide, where national capacity is insufficient, temporary material or financial support to restore land and property registry offices. This may include providing assistance to recover or re-establish cadastral and other property records and assisting authorities in ensuring that appropriate back-ups are taken of new records (e.g. secondary copies in a central registry, by electronic means). – Advocate for and support programmes providing for transitional, temporary and permanent housing to meet immediate needs for shelter. Such programmes can include construction of new housing, repair of damaged housing, or identification of and temporary allocation of public property. Where relevant measures must also be taken to provide documentation establishing legal title to such housing. Displaced persons' use of such temporary shelter does not and must not in any way undermine their right to restitution or compensation for their own property.
Information and communication activities	<ul style="list-style-type: none"> – Undertake information activities aimed at ensuring that the internally displaced are aware of their right to reclaim lost property and the mechanisms and procedures that enable them to do so. This may include training community leaders in order to assist them in raising awareness within their communities. Highlight the importance of safeguarding documents and other material that can assist the internally displaced in proving title to land and other property.
Legal aid	<ul style="list-style-type: none"> – Provide legal advice and assistance to returnees regarding housing, land or property claims, for instance by supporting the establishment of legal centers or clinics.
Physical safety	<ul style="list-style-type: none"> – Advocate with national and local authorities and other relevant actors, including UN agencies, to institute and carry out de-mining programmes and projects, to ensure the safety of land (not only in areas adjacent to homes but also in agricultural areas) and main transit routes, including not only roads and public spaces, but also paths and routes used by women and children to collect water or firewood. – Encourage national and local authorities and other relevant actors, including peace-keeping missions, to ensure the security and safety of returnees and of their reclaimed land, housing and property. Such measures should include protection of land, housing and property rights, ending illegal secondary occupations and halting of arbitrary evictions. The presence of law enforcement agents and, if present, peacekeeping forces can be particularly important to prevent human rights abuses during the removal of secondary occupants and at the time and immediately after displaced persons return to repossess their property, when tensions can run high.
Monitoring	<ul style="list-style-type: none"> – Monitor potential negative impacts of land distribution or restitution programmes to prevent further violations of rights, particularly where such systems aim to establish legal title over land, housing or property that was previously publicly, collectively or communally owned. Pay particular attention to the ability of women, children and indigenous peoples to claim and establish title. – Monitor to ensure that the rights of secondary occupants are respected prior to as well as in the case of eviction from houses and land they have occupied, including rights to fair procedures and the right to alternative shelter.
Durable solutions	<ul style="list-style-type: none"> – Advocate for the inclusion of provisions on housing, land and property rights, as well as restitution and/or compensation, to be included as a part of a human rights/rule of law component of peace agreements; voluntary return agreements, policies and programmes; and other documents. Such provision should include a non-discrimination clause, guaranteeing the equal rights of women and girls with men and boys to land, housing and property. – In those cases where return is not feasible and internally displaced persons choose to remain where they are or opt for settlement in another part of the country, advocate for allocation of new land to individuals and families. This must include the establishment of and formalisation of title in order to ensure sustainability of resettlement and guard against loss of land in the case of renewed displacement. Such programmes should include single-heads of households and older persons on equal basis with others.

Key actors

12. In addition to displaced individuals and communities themselves, key partners include:
- **National:** Ministries of justice and social affairs, national housing or property commissions, national human rights commissions, social/housing service agencies, bar associations and legal networks.
 - **International:** UNHABITAT, which is the focal point agency for land, housing and property rights, OHCHR, UNDP and FAO, and various NGO partners.

Key international legal principles

13. The right to have land, homes and other property either restored and/or compensated for is widely guaranteed in international and regional law, as well as in the national and customary law of most States. These rights are guaranteed both directly, for instance through the right to property and the right to redress, as well as indirectly, for instance through the right to return, the right to respect for the home, and the right to adequate housing. The above principles are reflected in the **Guiding Principles on Internal Displacement** (see below) and further elaborated in the **Principles on Housing and Property Restitution for Refugees and Displaced Persons** (Pinheiro Principles).

International and regional human rights law

- The right to **peaceful enjoyment of property**¹, includes the right to own, acquire - through purchase, gift or inheritance -, manage and enjoy tangible or intangible property, such as land, housing, money, bank accounts, livestock, crops, and pensions. All States are obliged not to arbitrarily deprive people of their property, to protect it from illegal interference by third parties, and to restore it to rightful owners following a period of *unlawful* dispossession. In addition, States are obliged to take all appropriate measures to eliminate discrimination against women and ensure that both spouses have the same rights in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.²
 - The right to an **effective remedy**³ for wrongful acts and violations of human rights includes the right to restitution of land, housing and other property or, where this is either impossible or impracticable, to receive compensation. It is important to highlight that the **right to property restitution or compensation is not conditional on the individual's return** to the area where the property is located, but remains valid even when a person chooses not return (often on the grounds of valid security concerns), but instead to opt to resettle and integrate elsewhere. There is a growing consensus that the right to remedy includes restitution and/or compensation for property other than land and housing, such as livestock, harvest and personal belongings.
14. The right to restitution and/or compensation for property is also inherent in other rights, including:
- The right to **return**⁴ is increasingly seen as encompassing not only return to the area of origin but more specifically to a person's home or place of habitual residence, particularly when read together with the right to **freedom of movement and to choose one's residence**. Return must be informed and voluntary, and take place in conditions of dignity and safety.
 - The right to **respect for the home** and to **freedom from being displaced**

¹ Principle 21 of the Guiding Principles; Art. 17 UDHR; Art XXIII AmDHR; Art. 21 AmCHR; Art 1 of Protocol 1 to the ECHR; Art. 14 ACHPR; and Art. 25 ACHR. See also Principles 5, 6 and 7 of Pinheiro Principles ("PP"), Arts. 13-19 of ILO Convention No. 169. The right is further affirmed in various resolutions of the GA, SC and the Council, formerly Commission, on Human Rights, as well as its Sub-Commission; as well as in the case law of the regional human rights courts.

² Art 16(2)(h), and 15(2), CEDAW; Art. 6(j), 7(d) and 21 of the Protocol to the ACHPR on the Rights of Women in Africa. See also Principles 3, 4 of PP.

³ **HR:** Art. 8 UDHR; Art. 2(3) ICCPR; Art. 6 CERD; Art. 11 CAT; Art. 30 CRC; Art. 75(1) ICC Statute; Art. 13 ECHR; Art. 10 and 25 AMCHR; Art. 7 ACHPR; and Art. 25 of the Protocol to the ACHPR on the Rights of Women in Africa. See also Arts. 35 and 26 of the Draft Articles on State Responsibility, as well as resolutions of the Council, formerly Commission on Human Rights, including 2005/35. See also, Principle 2 of Pinheiro Principles. **IHL:** Art. 3 of the Hague Convention IV; Art. 148 of GC IV and Art. 91 of Protocol I.

⁴ **HR:** Principle 28 Guiding Principles; Art. 13(2) UDHR; Art. 12(4) ICCPR; Art. 16(3) ILO Convention No. 169; Art. 22(5) AMCHR; Art. 12(2) ACHPR; and Art. 3(2) of Protocol IV to the ECHR. See also, Principle 10 of Pinheiro Principles. The right also has been affirmed in resolutions of the UN Security Council, General Assembly and Human Rights Council (formerly Commission) and its Sub-Commission; as well as in the case law of the regional human rights courts. **IHL:** Art. 49 GC IV; and Art. 85(4)(b) of Protocol I.

- The right to **an adequate standard of living**, including housing

International humanitarian law

15. During times of armed conflict, humanitarian law provides additional protection against destruction and appropriation of property, by prohibiting the following acts:
- pillage and destruction of private and public property⁵
 - direct and indiscriminate attacks and other acts of violence⁶
 - using civilian property to shield military operations or objectives⁷
 - making private property object of reprisals⁸ or collective punishment

Guiding Principles on Internal Displacement

Principle 21: “1. No one shall be arbitrarily deprived of property and possessions. 2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts: (a) Pillage; (b) Direct or indiscriminate attacks or other acts of violence; (c) Being used to shield military operations or objectives; (d) Being made the object of reprisal; and (e) Being destroyed or appropriated as a form of collective punishment. 3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.”

Principle 29: “... 2. 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 ... 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.”

Further reading

Many of the following reference documents are available at <http://www.refworld.org>

United Nations **Principles on Housing and Property Restitution for Refugees and Displaced Persons** (Pinheiro Principles) (COHRE, 2005)

A Handbook on Implementing the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons (IASC, 2007)

Housing and Property Restitution for Returnees, Refugee Survey Quarterly, Vol. 19, No. 3, (UNHCR and Oxford University Press).

Remedies for Violation of Rights to Housing, Land and Property, in Manual for Domestic Legislators on the Implementation of the Guiding Principles on Internal Displacement in Domestic Law and Policy (Brookings-Bern Project on Internal Displacement and American Society of International Law, forthcoming 2008).

Useful websites

Centre on Housing Rights and Evictions (COHRE): www.cohre.org

Internal Displacement Monitoring Centre (IDMC): www.internaldisplacement.org

⁵ Art. 33(2) and 53 GC IV; Art. 4(2)(g) Protocol II; Art. 28 of the Hague Regulations; and Art. 2(b)(xvi) ICC Statute.

⁶ Arts. 51(4)(a) and 52 of Protocol I.

⁷ Art. 51(7) of Protocol I.

⁸ Art. 33(3) GC IV and Art. 52(1) Protocol I.