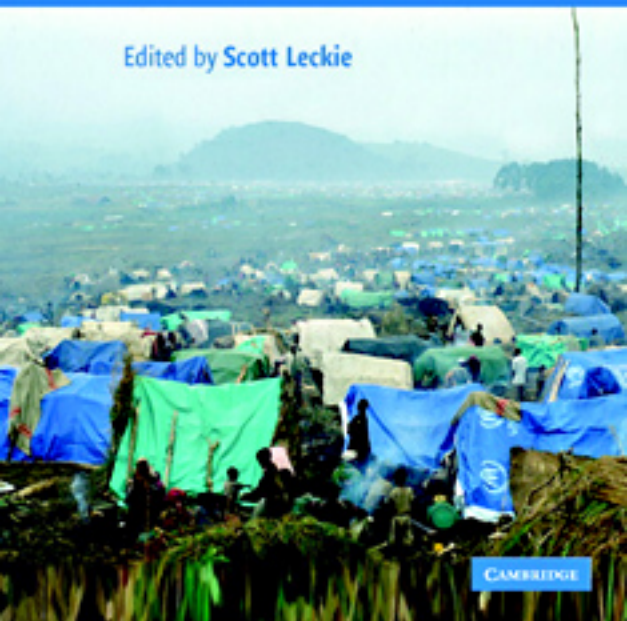


**Housing, Land, and Property  
Restitution Rights  
of Refugees and Displaced Persons**  
Laws, Cases, and Materials

Edited by **Scott Leckie**



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## **HOUSING, LAND, AND PROPERTY RESTITUTION RIGHTS OF REFUGEES AND DISPLACED PERSONS**

The legal recognition of the housing, land, and property rights of refugees and displaced persons has expanded steadily in recent years as the realization has grown that securing these rights will be beneficial to long-term peace, stability, economic vitality, and justice.

This volume contains more than 240 of the laws, cases, and materials that have been adopted during the past century that accord those unjustly and arbitrarily displaced from their homes and lands with rights: not simply to return to their countries or places of origin, but to return to the original home, land, or property from which they were initially forced to flee.

The breadth of the restitution standards found within this volume, combined with selected examples of case law and other materials, is a clear indication that a right to housing, land, and property restitution for refugees and displaced persons has emerged within the global legal domain.

Scott Leckie is an international human rights lawyer and advocate. He is active in many fields, including economic and social rights, housing rights, forced evictions, housing and property restitution rights for refugees and displaced persons, human rights issues in postconflict and postdisaster situations, and business and human rights.

**ALSO BY SCOTT LECKIE**

*United Nations Peace Operations and Housing, Land and Property Rights: Proposals for Reform* (ed., 2007)

*Returning Home: Housing and Property Restitution Rights of Refugees and Internally Displaced Persons*, Volume 2 (ed., 2007)

*Legal Resource Guide on Economic, Social and Cultural Rights* (ed., with Anne Gallagher, 2006)

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*When Push Comes to Shove: Forced Evictions and Human Rights* (1995)

*Destruction by Design: Housing Rights Violations in Tibet* (1994)

*From Housing Needs to Housing Rights* (1992)

# Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons

Laws, Cases, and Materials

Edited by

**SCOTT LECKIE**

Executive Director

Centre on Housing Rights and Evictions (COHRE)

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*For all of you . . .*

*Blameless*

*Yet punished, condemned*

*To everyone but you . . . nameless*

*Gazing*

*Eyes of hope, worn by fear*

*And yet*

*Longingly,*

*The edges of a smile lurks*

*Dreams of home*

*Perpetually near*





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## Acknowledgments

Although the preparation of a book with such sparse narrative as this may seem a quick and easy task, the ultimate completion of this volume – as they somehow always do – took far longer than originally envisaged. As it turned out, accessing, reviewing, selecting, and finally bringing together some of the literally thousands of possible standards on restitution issues was far more complex than initially foreseen at the time of the enthusiastic outset of this process.

Putting together a volume of this size and scope alone would have been truly daunting, and without the generous contribution of considerable time and energy by many friends and colleagues, it surely would have never seen the light of day.

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Scott Leckie  
Bangkok, 6 August 2006



## Preface

This volume contains some 240 of the most important international, regional, and national standards and judicial decisions recognising and addressing the many complexities associated with the housing, land, and property restitution rights of refugees and displaced persons. Many additional laws, cases, and materials on these themes are also in place throughout the world, but the selection found here attempts to provide an accurate and reasonably detailed picture of the current state of affairs with respect to these rights set within their various normative contexts.

The texts included within this book – that can be seen as collectively forming the normative basis for the right of refugees and displaced persons to have restored to them the housing, land, and property rights they held at the time of their displacement – stretch back ten decades to the Hague Conventions of 1907. Throughout the past century, numerous standards have been proposed, discussed, and ultimately approved on restitution, both internationally and at the national level. Over time, these documents have become increasingly specific, in the process refining the precise rights to housing, land, and property restitution enjoyed by those forced by circumstances beyond their control to flee their homes and lands.

In many respects, 2005 was witness to a high point of international standard-setting on these issues, with two vitally important new restitution standards being approved by United Nations (UN) bodies that considerably augment the housing, land, and property restitution rights of refugees and displaced persons. In August 2005, the ‘*Pinheiro*’ *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (see Section 1.15 for the full text) were approved by the UN Sub-Commission on the Protection and Promotion of Human Rights. The ‘*Pinheiro*’ *Principles* provide

the most comprehensive and consolidated international norm outlining the rights of refugees and displaced persons to have restored to them all of the housing, land, and property rights they held before their displacement.

In December 2005, the UN General Assembly adopted the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law* (see Section 1.16 for the full text), which further strengthens the rights of those forced from their homes to achieve a proper remedy for these abuses through the process of restitution. Together, these two new norms exemplify both the level of specificity that has been reached in the international recognition of these rights, as well as indicating the considerable seriousness now accorded these rights by the global community.

While much of the twentieth century was rather unkind to the prospect of housing, land, and property restitution, during the past two decades millions of people throughout the world have been able to formally exercise their housing, land, and property restitution rights and return home, from Tajikistan to Kosovo, from Mozambique to Liberia, and from Bosnia-Herzegovina to South Africa and beyond. Many of the standards contained in this volume were key ingredients in the creation of conditions that led to their eventual return home. These standards have not, alas, been taken seriously in every context they should have been applied, and as a result many tens of millions of refugees and displaced persons with existing, legally recognised, and fully legitimate restitution rights are unable to exercise them because of resistance by States and others responsible for the original displacement, many of which, in fact, are due to arbitrary, discriminatory, and unfair national laws specifically designed to prevent the exercise of housing, land, and property restitution rights.

## A Note on the Contents

This volume is intended to be a reference tool and consolidated source of *selected* international, regional, and national legal standards, nonlegal materials, and case law concerning the housing, land, and property restitution rights of refugees and displaced persons. This book is designed to assist those working with people asserting restitution rights – lawyers, refugee and IDP advocates, government officials, UN staff members, fieldworkers, and others – to easily access various types of standards recognising these rights within a single guide.

The volume does not provide analysis of the various standards, nor does it explain their nature, legal standing, or relative normative value. For those readers wishing to explore these issues, they may wish to review Part Five, which provides the citations of a wide range of books, articles, and other analyses of housing and property restitution issues. Most, if not all, of these standards are accessible on the Internet, and readers wishing to reference or otherwise use any of these norms are urged to examine these online to ensure that any updates, amendments, repeals, or other changes are adequately understood.

With one or two notable exceptions, every effort has been made to not include texts that have subsequently been repealed or substantially amended. However, given the frequent changes incorporated into domestic legislation, readers are again urged to confirm the current status of the national laws included in the volume before referencing them in any official manner. In one instance – that of Iraq – even though the standard contained in Section 12.4 resulted in the repeal of one of the regulations preceding it, it was felt important to retain the repealed standard to give readers a sense of the type of restitution regulations occupying powers, in this instance the United States, have proclaimed during their contentious occupation of this sovereign nation.

In the interests of preventing repetition and excessive length, considerable effort was made during the compilation of this volume to limit the number of particular types of standards, most notably relevant General Assembly resolutions and nonrefugee-specific national restitution legislation. The General Assembly, for instance, very rightly adopts essentially the same series of

resolutions each year in support of the housing, land, and property restitution rights of Palestinian refugees, but this volume only includes several of the more important pronouncements in this regard, including the most recent such series of resolutions approved in 2005.

In terms of national law, a concerted effort was made to only include a select few examples of domestic legislation regulating restitution efforts in formerly communist countries. Restitution programmes were carried out in many such countries; however, given that the emphasis in this book is on the housing, land, and property restitution rights held explicitly by refugees and displaced persons, it was felt that noting *some* of the restitution laws in Eastern Europe and elsewhere would suffice in revealing the nature of these laws, how they are formulated, and, ultimately, how they differ with and or are similar to restitution laws specifically designed to benefit refugees and the displaced.

## A Note on Organisation

Part One includes ten sections, each of which contain *international* texts addressing a wide variety of restitution themes. Section 1 includes sixteen international standards under international humanitarian law, international human rights law, international criminal law, international refugee law, the international law of state responsibility, and specific restitution standards.

Section 2 contains excerpts from fourteen peace agreements concluded since 1991, which explicitly or implicitly recognise housing, land, and property restitution rights for those displaced as a result of the conflict concerned. Peace agreements do not yet systematically address these issues, yet a pattern is emerging whereby constructively addressing housing, land, and property rights concerns within a rights-based peace-building process is increasingly seen as a major component of sustainable peace, reconciliation, economic viability, and overall political stability.

Twenty voluntary repatriation agreements concluded between United Nations High Commissioner for Refugees (UNHCR) and various governments are included in Section 3. Such agreements increasingly include reference to housing, land, and property issues as the international community comes to embrace the notion that successful

peace-building can only take place when these issues are properly and justly addressed.

UNHCR's role in strengthening restitution norms for refugees has been a vital one and, in recognition of this, beyond the agreements found in Section 3, five additional UNHCR texts are included in Section 4.

Section 5 includes full texts and excerpts of thirty-nine resolutions adopted by the UN Security Council since 1967 that affirm and reaffirm the crucial nature of protecting the housing, land, and property restitution rights of refugees and others forcibly displaced from their homes and lands.

Similarly, the UN General Assembly has addressed restitution issues since its inception, and as a result, scores of resolutions have been approved by this body, thirty-three of which are included in Section 6 of this volume.

The UN human rights machinery has also become increasingly involved in efforts to promote the housing, land, and property rights of refugees and displaced persons, and various resolutions and other standards approved by the Commission on Human Rights (now "Human Rights Council"), Sub-Commission on the Protection and Promotion of Human Rights, and several human rights treaty bodies are included in Sections 7–9. Section 10 contains two relevant standards approved by expert bodies, which address or are relevant to restitution themes.

Part Two provides several *regional* standards that address housing, land, and property restitution issues in Africa, the Americas, Europe, and the Middle East.

Part Three of the volume contains forty *national* laws and other statements enshrining housing, land, and property restitution rights. Laws from the following sixteen countries are provided: Afghanistan, Albania, Armenia, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Colombia, Estonia, Georgia, Germany, Iraq, Kosovo, Romania, Rwanda, South Africa, and Tajikistan.

Part Four contains selected case law from four adjudicating bodies: the Permanent Court of International Justice, the International Court of Justice, the UN Human Rights Committee, and the European Court on Human Rights. Readers should note that although most of the cases included essentially support the contention that refugees, displaced persons, or other human rights vic-

tims possess housing, land, and property rights, in some instances cases have been included that are more nuanced or even nonsupportive of such perspectives.

Finally, Part Five provides a selected bibliography of various publications addressing different dimensions of the housing, land, and property restitution question.

Readers should note that the various documents found in this book have been organised in descending order, with each section beginning with the oldest documents and ending with the newest.

### A Note on What Is Not Included

Although not as numerous as laws in support of restitution rights, many countries have adopted legislation consciously designed to *prevent* the exercise of housing, land, and property rights by refugees and displaced persons. Israel's absentee property laws, Bhutan's nationality laws, housing laws in Croatia, Rwandan legislation on refugee return, and many other pieces of existing law remain in place at the national level in spite of the clear preponderance of normative evidence found in this volume that those displaced from their homes have a right to return to and repossess those homes.

The texts of such laws are not included in the present volume, although the idea of systematically compiling these antirestitution laws into a separate volume may have considerable merit, and anyone wishing to make a positive contribution to the restitution question may well consider undertaking such an exercise.

### A Note on Sources

As noted, most of the documents included within this volume are available electronically on the Internet, with the exception of voluntary repatriation agreements and some of the national laws outlined here. Full texts of those available online can best be accessed through the following Web sites:

- (1) <http://un.org> for Part One – Section 1 (International Standards), Section 5 (UN Security Council), Section 6 (UN General Assembly), Section 7 (UN Commission on Human Rights), Section 8

- (UN Sub-Commission on the Protection and Promotion of Human Rights), and Section 9 (UN Human Rights Treaty Bodies) and Part Four – Sections 2 and 3;
- (2) <http://www.usip.org/library/pa.html> for Part One – Section 2 (Peace Agreements);
- (3) <http://www.unhcr.org/cgi-bin/texis/vtx/rsd> for Part One – Section 3 (Voluntary Repatriation Agreements) and Section 4 (UN High Commissioner for Refugees);
- (4) <http://www.worldcourts.com> for Part Four – Section 1 (Permanent Court of International Justice); and
- (5) <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database> for Part Four – Section 4 (European Court of Human Rights).



PART ONE

Housing and Property Restitution Standards –  
International

**1. INTERNATIONAL STANDARDS**

INTERNATIONAL HUMANITARIAN LAW

**1.1. Hague Convention (IV) Respecting the  
Laws and Customs of War on Land (1907)<sup>1</sup>**

[...]

**SECTION II – HOSTILITIES – CHAPTER I – MEANS  
OF INJURING THE ENEMY**

[...]

**Article 23**

In addition to the prohibitions provided by special  
Conventions, it is especially forbidden

[...]

(g) To destroy or seize the enemy's property, un-  
less such destruction or seizure be imperatively  
demanded by the necessities of war;

(h) To declare abolished, suspended, or inadmis-  
sible in a court of law the rights and actions of the  
nationals of the hostile party . . .

[...]

**Article 25**

The attack or bombardment, by whatever means,  
of towns, villages, dwellings, or buildings which are  
undefended is prohibited.

[...]

**Article 28**

The pillage of a town or place, even when taken by  
assault, is prohibited.

[...]

**1.2. Geneva Convention (IV) Relative to the  
Protection of Civilian Persons in Time of War  
(1949)<sup>2</sup>**

[...]

**Article 33**

No protected person may be punished for an  
offence he or she has not personally committed.  
Collective penalties and likewise all measures of  
intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their prop-  
erty are prohibited.

[...]

**Article 45**

Protected persons shall not be transferred to a  
Power which is not a party to the Convention.

This provision shall in no way constitute an obsta-  
cle to the repatriation of protected persons, or to  
their return to their country of residence after the  
cessation of hostilities.

**Article 46**

In so far as they have not been previously  
withdrawn, restrictive measures taken regarding

<sup>1</sup> Adopted on 18 October 1907 and entered into force on  
26 January 1910.

<sup>2</sup> Adopted on 12 August 1949 by the Diplomatic Conference  
for the Establishment of International Conventions for the  
Protection of Victims of War, held in Geneva from 21 April  
to 12 August 1949 and entered into force on 21 October  
1950.

protected persons shall be cancelled as soon as possible after the close of hostilities.

Restrictive measures affecting their property shall be cancelled, in accordance with the law of the Detaining Power, as soon as possible after the close of hostilities.

[...]

#### **Article 49**

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

[...]

#### **Article 53**

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other

public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

[...]

#### **Article 147**

Grave breaches... shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: ... extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

[...]

### **1.3. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1) (1977)<sup>3</sup>**

[...]

#### **Chapter III – Civilian Objectives**

##### **Article 52 – General Protection of Civilian Objects**

1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.

2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

[...]

<sup>3</sup> Adopted on 8 June 1977 and entered into force 7 December 1978 in accordance with Article 95.

### SECTION III – TREATMENT OF PERSONS IN THE POWER OF A PARTY TO THE CONFLICT

#### Chapter I – Field of Application and Protection of Persons and Objects

##### Article 73 – Refugees and Stateless Persons

Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction.

[...]

#### 1.4. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977)<sup>4</sup>

[...]

##### Article 13 – Protection of the Civilian Population

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

[...]

##### Article 17 – Prohibition of Forced Movement of Civilians

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict

unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

[...]

### INTERNATIONAL HUMAN RIGHTS LAW

#### 1.5. Universal Declaration of Human Rights (1948)<sup>5</sup>

[...]

##### Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

[...]

##### Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

[...]

##### Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his 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 control.

[...]

<sup>4</sup> Adopted on 8 June and entered into force on 7 December 1978 in accordance with Article 23.

<sup>5</sup> Adopted on 10 December 1948.

### 1.6. International Convention on the Elimination of All Forms of Racial Discrimination (1965)<sup>6</sup>

[...]

#### Article 5(e) (iii)

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) in particular ... (iii) the right to housing.

[...]

#### Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

[...]

### 1.7. International Covenant on Economic, Social and Cultural Rights (1966)<sup>7</sup>

[...]

#### Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate

means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

[...]

#### Article 11

1. 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 States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

[...]

### 1.8. International Covenant on Civil and Political Rights (1966)<sup>8</sup>

[...]

#### PART II

#### Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

<sup>6</sup> Adopted on 21 December 1965 and entered into force on 4 January 1969 in accordance with Article 19.

<sup>7</sup> Adopted on 16 December 1966 and entered into force on 23 March 1976 in accordance with Article 27.

<sup>8</sup> Adopted on 16 December 1966 and entered into force on 23 March 1976 in accordance with Article 49.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(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 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.

[...]

### PART III

#### Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

[...]

#### Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

[...]

### 1.9. Convention on the Rights of the Child (1989)<sup>9</sup>

[...]

#### Article 16

1. No child 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.

2. The child has the right to the protection of the law against such interference or attacks.

[...]

#### Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain

<sup>9</sup> Adopted on 20 November 1989 and entered into force on 2 September 1990 in accordance with Article 49.

information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

[...]

#### **1.10. Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries (1989)<sup>10</sup>**

[...]

##### **Article 16**

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

[...]

#### **INTERNATIONAL CRIMINAL LAW**

##### **1.11. Rome Statute of the International Criminal Court (1998)<sup>11</sup>**

[...]

##### **Article 5 – Crimes within the Jurisdiction of the Court**

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

##### **Article 6 – Genocide**

For the purpose of this Statute, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;

<sup>10</sup> Adopted on 27 June 1989 and entered into force on 5 September 1991 in accordance with Article 38.

<sup>11</sup> Adopted on 17 July 1998 and entered into force on 1 July 2002 in accordance with Article 126.

(e) Forcibly transferring children of the group to another group.

### **Article 7 – Crimes against Humanity**

1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) “Extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

### Article 8 – War Crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, “war crimes” means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (i) Wilful killing;
- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) Unlawful deportation or transfer or unlawful confinement;
- (viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peace-keeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;



(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peace-keeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

[. . .]

### **Article 75 – Reparation to Victims**

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.

3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.

4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.

5. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.

6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

[. . .]

## INTERNATIONAL REFUGEE LAW

Have agreed as follows:

**1.12. Convention Relating to the Status of Refugees (1951)<sup>12</sup>**

[. . .]

**Article 21 – Housing**

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

[. . .]

**Article 26 – Freedom of Movement**

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

[. . .]

**1.13. Protocol Relating to the Status of Refugees (1967)<sup>13</sup>**

The States Parties to the present Protocol,

*Considering* that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

*Considering* that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

*Considering* that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

<sup>12</sup> Adopted on 28 July 1951 and entered into force on 22 April 1954, in accordance with Article 43.

<sup>13</sup> Adopted on 16 December 1966 and entered into force on 4 October 1967 in accordance with Article 8.

**Article 1 – General Provisions**

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words “As a result of events occurring before 1 January 1951 and . . .” and the words “. . . as a result of such events”, in article 1 A (2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article I B (1) (a) of the Convention, shall, unless extended under article I B (2) thereof, apply also under the present Protocol.

**Article 2 – Co-Operation of the National Authorities with the United Nations**

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:

- (a) The condition of refugees;
- (b) The implementation of the present Protocol;
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

**Article 3 – Information on National Legislation**

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may

adopt to ensure the application of the present Protocol.

[...]

## THE INTERNATIONAL LAW OF STATE RESPONSIBILITY

### 1.14. International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001)<sup>14</sup>

[...]

#### Article 3

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act lawful by internal law.

[...]

#### Article 14(2)

The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.

[...]

#### Article 29

The legal consequences of an internationally wrongful act under the Part do not affect the continued duty of the responsible State to perform the obligation breached.

#### Article 30

The State responsible for the internationally wrongful act is under an obligation: (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

#### Article 31

The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations.

[...]

## Reparation for Injury

### Article 34 – Forms of Reparation

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.

### Article 35 – Restitution

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

- (a) Is not materially impossible;
- (b) Does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

### Article 36 – Compensation

1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

### Article 37 – Satisfaction

1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgment of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.

### Article 38

1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as

<sup>14</sup> Fifty-Third Session (2001) Extract from the Report of the International Law Commission on the work of its Fifty-Third Session, Official Records of the General Assembly, Fifty-Sixth Session, Supplement No. 10 (A/56/10), ch.IV.E.1.

it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.

[. . .]

## SPECIFIC RESTITUTION STANDARDS

### 1.15. 'Pinheiro' Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005)<sup>15</sup>

#### 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 Programs, 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 Programs, as a key element of restorative justice, contributes to effectively deterring future situations of displacement and building sustainable peace;

## 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

<sup>15</sup> Adopted without a vote on 11 August 2005 in Resolution 2005/21 by the UN Sub-Commission on Protection and Promotion of Human Rights, Geneva.

impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy to 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.

### SECTION III. OVERARCHING PRINCIPLES

#### 3. The Right to Non-Discrimination

3.1 Everyone has the right to non-discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, 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 the enjoyment of housing, land and property restitution. In particular, States shall ensure the equal right of men and women, and the equal right of boys and girls, to *inter alia* 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 Programs, policies and practices recognize the joint ownership rights of both the male and female heads of the household as an explicit component of the restitution process, and that restitution Programs, policies and practices reflect a gender sensitive approach.

4.3 States shall ensure that housing, land and property restitution Programs, 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 such 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 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 voluntarily return 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.

10.3 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.

## **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 which 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 possessory rights, 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 non-discrimination.

12.5 States should, 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, request the technical assistance and cooperation of relevant international agencies in order to establish provisional regimes responsible 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, and to receive a determination on their claim. 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 centers 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, easy to understand and use and make them available in the first language or languages of the groups affected. Competent assistance should be made available to help persons in completing and filing any necessary restitution claims forms, and such assistance should be provided in a manner which is age and gender sensitive.

13.8 Where restitution claims forms cannot be sufficiently simplified due to the complexities inherent in the claims process, States should engage qualified persons to interview potential



claimants in confidence, and in a manner which 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. The time period 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 information and access, the spread 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 (be they 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 Programs 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. Housing, Land and Property Records and Documentation**

15.1 States should establish or re-establish national multi-purpose cadastre or other appropriate systems for the registration of housing, land and property rights as an integral component of any restitution Programs, 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 right 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 non-discrimination.

15.3 States should ensure, where appropriate, that registration systems record and/or recognize the possessory rights 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 endeavor 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 possessory rights, 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 Programs. To the maximum extent possible, States should ensure that such persons are able to return to and re-possess 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 which is compatible with international human rights law and standards, such that secondary occupants are afforded safeguards of due process, including, *inter alia*, 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 States should, in cases where evictions of secondary occupants are justifiable and unavoidable, 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 to facilitate 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 States may consider, in cases where housing, land and property has been sold by secondary occupants to third parties acting in good faith, 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, preempting the formation of *bona fide* property interests in such cases.

## **18. Legislative Measures**

18.1 States should ensure 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 which prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.

9.2 States should take immediate steps to repeal unjust or arbitrary laws, and laws which 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 non-discrimination and to equality in both law and practice.

### **20. Enforcement of Restitution Decisions and Judgments**

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

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 judgments 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 judgments. Threats or attacks against officials and agencies carrying out restitution Programs 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 Programs.

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 judgments, 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 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, 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.

## 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 Programs 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 *inter alia* 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 Programs 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 judgments. Member States in 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.

### 1.16. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2005)<sup>16</sup>

#### PREAMBLE

*The General Assembly,*

*Recalling* the provisions providing a right to a remedy for victims of violations of international human rights law found in numerous international instruments, in particular article 8 of the Universal Declaration of Human Rights, 1 article 2 of the International Covenant on Civil and Political Rights, 2 article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 39 of the Convention on the Rights of the Child, and of international humanitarian law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), article 91

<sup>16</sup> Adopted by UN General Assembly Resolution 60/147 (16 December 2005).

of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, and articles 68 and 75 of the Rome Statute of the International Criminal Court,

*Recalling* the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular article 7 of the African Charter on Human and Peoples' Rights, article 25 of the American Convention on Human Rights, and article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms,

*Recalling* the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and General Assembly resolution 40/34 of 29 November 1985 by which the Assembly adopted the text recommended by the Congress,

*Reaffirming* the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,

*Noting* that the Rome Statute of the International Criminal Court requires the establishment of "principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation", requires the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, and mandates the Court "to protect the safety, physical and psychological well-being, dignity and privacy of victims" and to permit the participation of victims at all "stages of the proceedings determined to be appropriate by the Court",

*Affirming* that the Basic Principles and Guidelines contained herein are directed at gross violations

of international human rights law and serious violations of international humanitarian law which, by their very grave nature, constitute an affront to human dignity,

*Emphasizing* that the Basic Principles and Guidelines contained herein do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms,

*Recalling* that international law contains the obligation to prosecute perpetrators of certain international crimes in accordance with international obligations of States and the requirements of national law or as provided for in the applicable statutes of international judicial organs, and that the duty to prosecute reinforces the international legal obligations to be carried out in accordance with national legal requirements and procedures and supports the concept of complementarity,

*Noting* that contemporary forms of victimization, while essentially directed against persons, may nevertheless also be directed against groups of persons who are targeted collectively,

*Recognizing* that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms the international legal principles of accountability, justice and the rule of law,

*Convinced* that, in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law, including violations of international human rights law and international humanitarian law, as well as with humanity at large, in accordance with the following Basic Principles and Guidelines,

*Adopts* the following Basic Principles and Guidelines:

**(i) Obligation to respect, ensure respect for and implement international human rights law and international humanitarian law**

1. The obligation to respect, ensure respect for and implement international human rights law

and international humanitarian law as provided for under the respective bodies of law emanates from:

- (a) Treaties to which a State is a party;
- (b) Customary international law;
- (c) The domestic law of each State.

2. If they have not already done so, States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by:

- (a) Incorporating norms of international human rights law and international humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;
- (b) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;
- (c) Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below;
- (d) Ensuring that their domestic law provides at least the same level of protection for victims as that required by their international obligations.

#### **(ii) Scope of the obligation**

3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:

- (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;
- (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;
- (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and
- (d) Provide effective remedies to victims, including reparation, as described below.

#### **(iii) Gross violations of international human rights law and serious violations of international humanitarian law that constitute crimes under international law**

4. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.

5. To that end, where so provided in an applicable treaty or under other international law obligations, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction. Moreover, where it is so provided for in an applicable treaty or other international legal obligations, States should facilitate extradition or surrender offenders to other States and to appropriate international judicial bodies and provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to, and protection of, victims and witnesses, consistent with international human rights legal standards and subject to international legal requirements such as those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment.

#### **(iv) Statutes of limitations**

6. Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.

7. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.

**(v) Victims of gross violations of international human rights law and serious violations of international humanitarian law**

8. For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

9. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.

**(vi) Treatment of victims**

10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

**(vii) Victims’ right to remedies**

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms.

**(viii) Access to justice**

12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:

(a) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;

(b) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;

(c) Provide proper assistance to victims seeking access to justice;

(d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.

13. In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.

14. An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.

**(ix) Reparation for harm suffered**

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

16. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.

17. States shall, with respect to claims by victims, enforce domestic judgments for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgments for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgments.

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights,

identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. *Rehabilitation* should include medical and psychological care as well as legal and social services.

22. *Satisfaction* should include, where applicable, any or all of the following:

- (a) Effective measures aimed at the cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
- (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- (e) Public apology, including acknowledgement of the facts and acceptance of responsibility;



(f) Judicial and administrative sanctions against persons liable for the violations;

(g) Commemorations and tributes to the victims;

(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention:

(a) Ensuring effective civilian control of military and security forces;

(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

(c) Strengthening the independence of the judiciary;

(d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

(e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

(x) **Access to relevant information concerning violations and reparation mechanisms**

24. States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available

legal, medical, psychological, social, administrative and all other services to which victims may have a right of access. Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.

(xi) **Non-discrimination**

25. The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception.

(xii) **Non-derogation**

26. Nothing in these Basic Principles and Guidelines shall be construed as restricting or derogating from any rights or obligations arising under domestic and international law. In particular, it is understood that the present Basic Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights law and international humanitarian law. It is further understood that these Basic Principles and Guidelines are without prejudice to special rules of international law.

(xiii) **Rights of others**

27. Nothing in this document is to be construed as derogating from internationally or nationally protected rights of others, in particular the right of an accused person to benefit from applicable standards of due process.

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## 2. PEACE AGREEMENTS

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### 2.1. Cambodia – Agreement on a Comprehensive Political Settlement on the Cambodia Conflict (1991)

The States participating in the Paris Conference on Cambodia, namely Australia, Brunei Darussalam, Cambodia, Canada, the People's Republic of China, the French Republic, the Republic of India, the Republic of Indonesia, Japan, the Lao People's

Democratic Republic, Malaysia, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Socialist Republic of Viet Nam and the Socialist Federal Republic of Yugoslavia,

In the presence of the Secretary-General of the United Nations,

In order to maintain, preserve and defend the sovereignty, independence, territorial integrity and inviolability, neutrality and national unity of Cambodia,

Desiring to restore and maintain peace in Cambodia, to promote national reconciliation and to ensure the exercise of the right to self-determination of the Cambodian people through free and fair elections,

Convinced that only a comprehensive political settlement to the Cambodia conflict will be just and durable and will contribute to regional and international peace and security,

Welcoming the Framework document of 28 August 1990, which was accepted by the Cambodian Parties in its entirety as the basis for settling the Cambodia conflict, and which was subsequently unanimously endorsed by Security Council resolution 668 (1990) of 20 September 1990 and General Assembly resolution 45/3 of 15 October 1990,

Noting the formation in Jakarta on 10 September 1990 of the Supreme National Council of Cambodia as the unique legitimate body and source of authority in Cambodia in which, throughout the transitional period, national sovereignty and unity are enshrined, and which represents Cambodia externally,

Welcoming the unanimous election, in Beijing on 17 July 1991, of H.R.H. Prince Norodom Sihanouk as the President of the Supreme National Council,

Recognising that an enhanced United Nations role requires the establishment of a United Nations Transitional Authority in Cambodia (UNTAC) with civilian and military components, which will act with full respect for the national sovereignty of Cambodia,

Noting the statements made at the conclusion of the meetings held in Jakarta on 9–10 September

1990, in Paris on 21–23 December 1990, in Pattaya on 24–26 June 1991, in Beijing on 16–17 July 1991, in Pattaya on 26–29 August 1991, and also the meetings held in Jakarta on 4–6 June 1991 and in New York on 19 September 1991,

Welcoming United Nations Security Council resolution 717 (1991) of 16 October 1991 on Cambodia,

Recognising that Cambodia's tragic recent history requires special measures to assure protection of human rights, and the non-return to the policies and practices of the past,

Have agreed as follows:

[. . .]

## **PART V – REFUGEES AND DISPLACED PERSONS**

### **Article 19**

Upon entry into force of this Agreement, every effort will be made to create in Cambodia political, economic and social conditions conducive to the voluntary return and harmonious integration of Cambodian refugees and displaced persons.

### **Article 20**

Cambodian refugees and displaced persons, located outside Cambodia, shall have the right to return to Cambodia and to live in safety, security and dignity, free from intimidation or coercion of any kind.

The Signatories request the Secretary-General of the United Nations to facilitate the repatriation in safety and dignity of Cambodian refugees and displaced persons, as an integral part of the comprehensive political settlement and under the overall authority of the Special Representative of the Secretary-General, in accordance with the guidelines and principles on the repatriation of refugees and displaced persons as set forth in annex 4.

[. . .]

## **ANNEX 4 – REPATRIATION OF CAMBODIAN REFUGEES AND DISPLACED PERSONS**

### **PART I – INTRODUCTION**

As part of the comprehensive political settlement, every assistance will need to be given to Cambodian refugees and displaced persons as well as to

countries of temporary refuge and the country of origin in order to facilitate the voluntary return of all Cambodian refugees and displaced persons in a peaceful and orderly manner. It must also be ensured that there would be no residual problems for the countries of temporary refuge. The country of origin with responsibility towards its own people will accept their return as conditions become conducive.

## **PART II – CONDITIONS CONDUCTIVE TO THE RETURN OF REFUGEES AND DISPLACED PERSONS**

The task of rebuilding the Cambodian nation will require the harnessing of all its human and natural resources. To this end, the return to the place of their choice of Cambodians from their temporary refuge and elsewhere outside their country of origin will make a major contribution.

Every effort should be made to ensure that the conditions which have led to a large number of Cambodian refugees and displaced persons seeking refuge in other countries should not recur. Nevertheless, some Cambodian refugees and displaced persons will wish and be able to return spontaneously to their homeland.

There must be full respect for the human rights and fundamental freedoms of all Cambodians, including those of the repatriated refugees and displaced persons, in recognition of their entitlement to live in peace and security, free from intimidation and coercion of any kind. These rights would include, inter alia, freedom of movement within Cambodia, the choice of domicile and employment, and the right to property.

In accordance with the comprehensive political settlement, every effort should be made to create concurrently in Cambodia political, economic and social conditions conducive to the return and harmonious integration of the Cambodian refugees and displaced persons.

With a view to ensuring that refugees and displaced persons participate in the elections, mass repatriation should commence and be completed as soon as possible, taking into account all the political, humanitarian, logistical, technical and socio-economic factors involved, and with the co-operation of the SNC.

Repatriation of Cambodian refugees and displaced persons should be voluntary and their decision should be taken in full possession of the facts. Choice of destination within Cambodia should be that of the individual. The unity of the family must be preserved.

## **PART III – OPERATIONAL FACTORS**

Consistent with respect for principles of national sovereignty in the countries of temporary refuge and origin, and in close co-operation with the countries of temporary refuge and origin, full access by the Office of the United Nations High Commissioner for Refugees (UNHCR), CRC and other relevant international agencies should be guaranteed to all Cambodian refugees and displaced persons, with a view to the agencies undertaking the census, tracing, medical assistance, food distribution and other activities vital to the discharge of their mandate and operational responsibilities; such access should also be provided in Cambodia to enable the relevant international organisations to carry out their traditional monitoring as well as operational responsibilities.

In the context of the comprehensive political settlement, the Signatories note with satisfaction that the Secretary-General of the United Nations has entrusted UNHCR with the role of leadership and co-ordination among intergovernmental agencies assisting with the repatriation and relief of Cambodian refugees and displaced persons. The Signatories look to all non-governmental organisations to co-ordinate as much as possible their work for the Cambodian refugees and displaced persons with that of UNHCR.

The SNC, the Governments of the countries in which the Cambodian refugees and displaced persons have sought temporary refuge, and the countries which contribute to the repatriation and integration effort will wish to monitor closely and facilitate the repatriation of the returnees. An ad hoc consultative body should be established for a limited term for these purposes. The UNHCR, the ICRC, and other international agencies as appropriate, as well as UNTAC, would be invited to join as full participants.

Adequately monitored short-term repatriation assistance should be provided on an impartial basis to enable the families and individuals returning to

Cambodia to establish their lives and livelihoods harmoniously in their society. These interim measures would be phased out and replaced in the longer term by the reconstruction programme.

Those responsible for organising and supervising the repatriation operation will need to ensure that conditions of security are created for the movement of the refugees and displaced persons. In this respect, it is imperative that appropriate border crossing points and routes be designated and cleared of mines and other hazards.

The international community should contribute generously to the financial requirements of the repatriation operation.

[...]

## **2.2. El Salvador – Peace Agreement between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (1992)**

[...]

### **CHAPTER V**

#### **Economic and Social Questions**

##### **1 Preamble**

One of the prerequisites for the democratic reunification of Salvadorian society is the sustained economic and social development of the country. At the same time, reunification of Salvadorian society and a growing degree of social cohesion are indispensable for fostering development. Hence, the set of agreements required to put a definitive end to the armed conflict in El Salvador must include certain minimum commitments to promote development for the benefit of all sectors of the population.

In accordance with the New York Agreement, the issues covered by this instrument are: the agrarian problem, loans to the agricultural sector, measures required to alleviate the social cost of structural adjustment programmes, appropriate procedures for direct external cooperation designed to encourage community development and assistance projects, establishment of a forum for economic and social consultation and the National

Reconstruction Plan. Also, although the general philosophy or orientation of the Government's economic policy, which FMLN does not necessarily share, is not covered by this Agreement, both Parties agree on the need to provide certain basic guidelines so as to ensure the requisite social stability during the transitional period, consolidate peace and make progress towards the reunification of Salvadorian society.

##### **2 The agrarian problem**

###### *Lands in excess of the constitutional limit of 245 hectares*

The Government of El Salvador shall transfer rural farmland that has not yet been transferred under articles 105 and 267 of the Constitution of the Republic.

It likewise undertakes to ensure that implementation of the relevant constitutional requirements is not evaded by owners of rural holdings in excess of 245 hectares.

###### *State-owned lands which are not currently part of a forestry reserve*

The Government of El Salvador shall transfer to beneficiaries of the agrarian reform, as provided in article 104 of the Constitution, State-owned rural farmland which is not part of a forestry reserve.

Under the various land-transfer programmes which the Government of El Salvador is carrying out with State-owned farmland, preference shall be given to former combatants of both Parties who so request voluntarily, are of peasant origin and familiar with farming, and possess no land of any kind. The size of the lots shall be determined by the amount of land available, as mentioned above, and the number of beneficiaries who meet the conditions set out in this section.

###### *Lands offered for sale to the State*

Making use of the legal, technical and financial resources available to it, the Government of El Salvador shall seek to acquire and transfer through the Land Bank lands voluntarily offered for sale by their owners. Once the said lands are acquired, they shall be transferred to beneficiaries of the agrarian reform.

*Recipients of lands transferred in accordance with the preceding sections*

The lands acquired under sections A, B and C of this chapter shall be used to satisfy the need for land of landless peasants and small farmers. Specifically, title to the land shall be transferred legally to the peasants and small farmers designated by law as beneficiaries of the agrarian reform.

*Payments for land*

The lands referred to in the preceding sections shall be transferred at market prices and on the same credit terms as are granted to beneficiaries of the reformed sector. At the same time, a system of payments may be established on the basis of a fixed price and long-term financing at low, fixed interest rates not subject to interest capitalization. Domestic credit shall be supplemented with financing from international cooperation, for which a special fund, financed from external resources, shall be established for the purchase of land.

*New legislation*

Since the current agrarian legislation is haphazard, contradictory and incomplete, the Parties agree that it must be harmonized and unified into an agrarian code. To this end, the Government shall submit the relevant draft legislation to the Legislative Assembly no later than 12 months after the signing of this Agreement. If it fails to do so, COPAZ shall take on the task of preparing the corresponding preliminary draft.

### 3 Lands within conflict zones

*The land-tenure system in conflict zones*

In accordance with the New York Agreement, the current land-tenure situation in conflict zones shall be respected until a satisfactory legal solution for the definitive land-tenure system is arrived at. Consequently, landholders shall not be evicted pending agreement on such a solution; moreover, they shall be given financial support to increase agricultural production.

In view of the irregularity of the land-tenure system in conflict zones, the Parties agree on the following:

*Determination as to who are the “current landholders”*

“Landholders” shall mean those currently occupying and/or working the land in conflict zones.

*Inventory of cases covered by this part of the Agreement*

Within 30 days from the signing of the Agreement, FMLN shall submit an inventory of land or buildings affected by the Agreement. Upon verification that such land or buildings are in fact subject to the provisions of this Agreement, and in accordance with the procedure set forth in the next section, the Government of El Salvador shall seek to provide a satisfactory legal solution for their final disposal through the voluntary sale of such property by the rightful owners to the current holders, on the terms referred to in section 3(F) of this chapter.

Should a rightful owner not wish to sell his property, the Government of El Salvador shall make use of the legal mechanisms at its disposal to try to resettle the peasants or small farmers on such land as may be available for the purpose and shall, as far as possible, seek to ensure that such land is situated in the same zones.

*Establishment of a Special Commission*

COPAZ shall appoint a special commission whose members shall be of recognized integrity and ability. The special commission, to be formed within 20 days following the signing of this Agreement, shall be entrusted with the following tasks and duties:

To verify the inventory of affected land or buildings within conflict zones. Once the inventory has been verified, the special commission shall submit copies to the Government of El Salvador and to COPAZ;

Should the need arise, to facilitate the settlement of disputes between current holders and rightful owners;

To take any decisions and measures it deems necessary and proper for the prompt and effective fulfilment of the agreements set forth in this chapter.

*Legalization of land tenure*

Except for particularly complex cases, the Government of El Salvador shall legalize the land-tenure situation in conflict zones definitively within six months from the signing of the cease-fire agreement, granting, as appropriate, individual or collective title to the land.

*Payment for lands*

Lands shall be purchased from their former owners at market prices. The sale to the current holders shall be subject to the same conditions as those granted to beneficiaries of the reformed sector. However, special conditions may be agreed to in the interests of the peace process.

*Verification by COPAZ*

COPAZ shall guarantee fulfilment of the agreements set forth in sections 2 and 3.

**4 3 July 1991 agreement on occupied lands**

The agreement on occupied lands between the Government of El Salvador and peasant organizations shall be respected.

With regard to lands occupied illegally after the date of that agreement, the Government of El Salvador gives notice that it reserves the right to enforce the relevant legal provisions so as to ensure that the rule of law prevails. FMLN holds that the agrarian problem, including land occupations, should be dealt with through consultation and the channels and mechanisms provided by the peace agreements.

[...]

**2.3. Mozambique – The Rome Process:  
General Peace Agreement for Mozambique  
(1992)**

[...]

**PROTOCOL III**
**(iv) Return of Mozambican refugees and  
displaced persons and their social reintegration**

(a) The parties undertake to co-operate in the repatriation and reintegration of Mozambican refugees and displaced persons in the national territory and the social integration of war-disabled;

(b) Without prejudice to the liberty of movement of citizens, the Government shall draw up a draft agreement with Renamo to organise the necessary assistance to refugees and displaced persons, preferably in their original places of residence. The parties agree to seek the involvement of the competent United Nations agencies in the drawing up and

implementation of this plan. The International Red Cross and other organisations to be agreed upon shall be invited to participate in the implementation of the plan;

(c) Mozambican refugees and displaced persons shall not forfeit any of the rights and freedoms of citizens for having left their original places of residence;

(d) Mozambican refugees and displaced persons shall be registered and included in the electoral rolls together with other citizens in their places of residence;

(e) Mozambican refugees and displaced persons shall be guaranteed restitution of property owned by them which is still in existence and the right to take legal action to secure the return of such property from individuals in possession of it.

[...]

**2.4. Liberia – Cotonou Agreement (1993)**

[...]

**Article 18 – Repatriation of Refugees**

The Parties hereby commit themselves immediately and permanently to bring to an end any further external or internal displacement of Liberians and to create the conditions that will allow all refugees and displaced persons to, respectively, voluntarily repatriate and return to Liberia to their places of origin or habitual residence under conditions of safety and dignity.

The Parties further call upon Liberian refugees and displaced persons to return to Liberia and to their places of origin or habitual residence and declare that they shall not be jeopardized in any ethnic, political, religious, regional or geographical considerations.

The Parties also call upon the relevant organizations of the United Nations system, particularly the Office of the United Nations High Commissioner for Refugees and the United Nations Development Programme, other intergovernmental and non-governmental organizations, to implement programmes for the voluntary repatriation, return and

reintegration of the Liberian refugees and internally displaced persons.

The Parties proclaim that they shall, jointly or individually, cooperate in all necessary ways with themselves and with the above-mentioned organizations in order to facilitate the repatriation, return and reintegration of the refugees and displaced persons. Amongst others, they agree to:

Establish all necessary mechanisms or arrangements, such as joint repatriation committees, which would facilitate contacts, communications and work with the relevant organizations for purposes of implementing the repatriation, return and reintegration operation and to enable effective decision-making and implementation of the relevant activities;

Facilitate access by the Office of the United Nations High Commissioner for Refugees and other organizations to the refugees and displaced persons who have returned so as to deliver the necessary humanitarian assistance and programmes and monitor their situation;

Guarantee and provide security to the Office of the United Nations High Commissioner for Refugees and the other relevant organizations, their staff, vehicles, equipment and resources necessary to carry out their work;

Provide all other necessary facilities and support that will be necessary to facilitate the implementation of the return, voluntary repatriation and reintegration of refugees and displaced persons.

[...]

## 2.5. Rwanda – Arusha Peace Agreement (1993)

[...]

### Article 4

The right to property is a fundamental right for all the people of Rwanda. All refugees shall therefore have the right to repossess their property on return.

The two parties recommend, however, that in order to promote social harmony and national reconciliation, refugees who left the country more than 10 years ago should not reclaim their properties, which might have been occupied by other people.

The Government shall compensate them by putting land at their disposal and shall help them to resettle. As for estates which have been occupied by the Government, the returnee shall have the right for an equitable compensation by the Government.

[...]

## 2.6. Bosnia-Herzegovina – General Framework Agreement on Peace in Bosnia-Herzegovina (Dayton Peace Agreement) – Annex 7: Agreement on Refugees and Displaced Persons (1995)

The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska (the “Parties”) have agreed as follows:

### CHAPTER ONE: PROTECTION

#### Article I – Rights of Refugees and Displaced Persons

1. All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries.

2. The Parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.

3. The Parties shall take all necessary steps to prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons. To demonstrate their commitment to securing full respect for the human rights and fundamental freedoms of all persons within their jurisdiction and creating without delay conditions suitable for return of refugees and

displaced persons, the Parties shall take immediately the following confidence building measures:

(a) the repeal of domestic legislation and administrative practices with discriminatory intent or effect;

(b) the prevention and prompt suppression of any written or verbal incitement, through media or otherwise, of ethnic or religious hostility or hatred;

(c) the dissemination, through the media, of warnings against, and the prompt suppression of, acts of retribution by military, paramilitary, and police services, and by other public officials or private individuals;

(d) the protection of ethnic and/or minority populations wherever they are found and the provision of immediate access to these populations by international humanitarian organizations and monitors;

(e) the prosecution, dismissal or transfer, as appropriate, of persons in military, paramilitary, and police forces, and other public servants, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups.

4. Choice of destination shall be up to the individual or family, and the principle of the unity of the family shall be preserved. The Parties shall not interfere with the returnees' choice of destination, nor shall they compel them to remain in or move to situations of serious danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a normal life. The Parties shall facilitate the flow of information necessary for refugees and displaced persons to make informed judgments about local conditions for return.

5. The Parties call upon the United Nations High Commissioner for Refugees ("UNHCR") to develop in close consultation with asylum countries and the Parties a repatriation plan that will allow for an early, peaceful, orderly and phased return of refugees and displaced persons, which may include priorities for certain areas and certain categories of returnees. The Parties agree to implement such a plan and to conform their international agreements and internal laws to it. They accordingly call upon States that have accepted refugees to promote the early return of refugees consistent with international law.

## **Article II – Creation of Suitable Conditions for Return**

1. The Parties undertake to create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group. The Parties shall provide all possible assistance to refugees and displaced persons and work to facilitate their voluntary return in a peaceful, orderly and phased manner, in accordance with the UNHCR repatriation plan.

2. The Parties shall not discriminate against returning refugees and displaced persons with respect to conscription into military service, and shall give positive consideration to requests for exemption from military or other obligatory service based on individual circumstances, so as to enable returnees to rebuild their lives.

## **Article III – Cooperation with International Organizations and International Monitoring**

1. The Parties note with satisfaction the leading humanitarian role of UNHCR, which has been entrusted by the Secretary-General of the United Nations with the role of coordinating among all agencies assisting with the repatriation and relief of refugees and displaced persons.

2. The Parties shall give full and unrestricted access by UNHCR, the International Committee of the Red Cross ("ICRC"), the United Nations Development Programme ("UNDP"), and other relevant international, domestic and nongovernmental organizations to all refugees and displaced persons, with a view to facilitating the work of those organizations in tracing persons, the provision of medical assistance, food distribution, reintegration assistance, the provision of temporary and permanent housing, and other activities vital to the discharge of their mandates and operational responsibilities without administrative impediments. These activities shall include traditional protection functions and the monitoring of basic human rights and humanitarian conditions, as well as the implementation of the provisions of this Chapter.

3. The Parties shall provide for the security of all personnel of such organizations.



**Article IV – Repatriation Assistance**

The Parties shall facilitate the provision of adequately monitored, short-term repatriation assistance on a non-discriminatory basis to all returning refugees and displaced persons who are in need, in accordance with a plan developed by UNHCR and other relevant organizations, to enable the families and individuals returning to re-establish their lives and livelihoods in local communities.

**Article V – Persons Unaccounted For**

The Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for.

**Article VI – Amnesty**

Any returning refugee or displaced person charged with a crime, other than a serious violation of international humanitarian law as defined in the Statute of the International Tribunal for the Former Yugoslavia since January 1, 1991 or a common crime unrelated to the conflict, shall upon return enjoy an amnesty. In no case shall charges for crimes be imposed for political or other inappropriate reasons or to circumvent the application of the amnesty.

**CHAPTER TWO: COMMISSION FOR DISPLACED PERSONS AND REFUGEES****Article VII – Establishment of the Commission**

The Parties hereby establish an independent Commission for Displaced Persons and Refugees (the “Commission”). The Commission shall have its headquarters in Sarajevo and may have offices at other locations as it deems appropriate.

**Article VIII – Cooperation**

The Parties shall cooperate with the work of the Commission, and shall respect and implement its decisions expeditiously and in good faith, in cooperation with relevant international and nongovernmental organizations having responsibility for the return and reintegration of refugees and displaced persons.

**Article XI – Mandate**

The Commission shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return.

**Article XII – Proceedings before the Commission**

1. Upon receipt of a claim, the Commission shall determine the lawful owner of the property with respect to which the claim is made and the value of that property. The Commission, through its staff or a duly designated international or nongovernmental organization, shall be entitled to have access to any and all property records in Bosnia and Herzegovina, and to any and all real property located in Bosnia and Herzegovina for purposes of inspection, evaluation and assessment related to consideration of a claim.

2. Any person requesting the return of property who is found by the Commission to be the lawful owner of that property shall be awarded its return. Any person requesting compensation in lieu of return who is found by the Commission to be the lawful owner of that property shall be awarded just compensation as determined by the Commission. The Commission shall make decisions by a majority of its members.

3. In determining the lawful owner of any property, the Commission 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 that was otherwise in connection with ethnic cleansing. Any person who is awarded return of property may accept a satisfactory lease arrangement rather than retake possession.

4. The Commission shall establish fixed rates that may be applied to determine the value of all real property in Bosnia and Herzegovina that is the subject of a claim before the Commission. The rates shall be based on an assessment or survey of properties in the territory of Bosnia and Herzegovina undertaken prior to April 1, 1992, if available, or may be based on other reasonable criteria as determined by the Commission.

5. The Commission shall have the power to effect any transactions necessary to transfer or assign title, mortgage, lease, or otherwise dispose of property with respect to which a claim is made, or which is determined to be abandoned. In particular, the Commission may lawfully sell, mortgage, or lease real property to any resident or citizen of Bosnia and Herzegovina, or to either Party, where the lawful owner has sought and received compensation in lieu of return, or where the property is determined to be abandoned in accordance with local law. The Commission may also lease property pending consideration and final determination of ownership.

6. In cases in which the claimant is awarded compensation in lieu of return of the property, the Commission may award a monetary grant or a compensation bond for the future purchase of real property. The Parties welcome the willingness of the international community assisting in the construction and financing of housing in Bosnia and Herzegovina to accept compensation bonds awarded by the Commission as payment, and to award persons holding such compensation bonds priority in obtaining that housing.

7. Commission decisions shall be final, and any title, deed, mortgage, or other legal instrument created or awarded by the Commission shall be recognized as lawful throughout Bosnia and Herzegovina.

8. Failure of any Party or individual to cooperate with the Commission shall not prevent the Commission from making its decision.

#### **Article XIII – Use of Vacant Property**

The Parties, after notification to the Commission and in coordination with UNHCR and other international and nongovernmental organizations contributing to relief and reconstruction, may temporarily house refugees and displaced persons in vacant property, subject to final determination of ownership by the Commission and to such temporary lease provisions as it may require.

#### **Article XIV – Refugees and Displaced Persons Property Fund**

1. A Refugees and Displaced Persons Property Fund (the “Fund”) shall be established in the Central Bank of Bosnia and Herzegovina to be administered by the Commission. The Fund shall be replenished through the purchase, sale, lease

and mortgage of real property which is the subject of claims before the Commission. It may also be replenished by direct payments from the Parties, or from contributions by States or international or nongovernmental organizations.

2. Compensation bonds issued pursuant to Article XII(6) shall create future liabilities on the Fund under terms and conditions to be defined by the Commission.

#### **Article XV – Rules and Regulations**

The Commission shall promulgate such rules and regulations, consistent with this Agreement, as may be necessary to carry out its functions. In developing these rules and regulations, the Commission shall consider domestic laws on property rights.

#### **Article XVI – Transfer**

Five years after this Agreement takes effect, responsibility for the financing and operation of the Commission shall transfer from the Parties to the Government of Bosnia and Herzegovina, unless the Parties otherwise agree. In the latter case, the Commission shall continue to operate as provided above.

#### **Article XVII – Notice**

The Parties shall give effective notice of the terms of this Agreement throughout Bosnia and Herzegovina, and in all countries known to have persons who were citizens or residents of Bosnia and Herzegovina.

[...]

#### **2.7. Guatemala – Agreement on Identity and Rights of Indigenous Peoples (1995)**

[...]

#### **E. Rights Relating to Land of the Indigenous Peoples**

1. The rights relating to land of the indigenous peoples include both the communal or collective and the individual tenure of land, rights of ownership and possession and other real rights, and the use of natural resources for the benefit of the communities without detriment to their habitat. Legislative and administrative measures must be developed to ensure recognition, the awarding of title,

protection, recovery, restitution and compensation for those rights.

2. The lack of protection of the rights relating to land and natural resources of the indigenous peoples is part of a very wide-ranging set of problems resulting, *inter alia*, from the fact that both the indigenous and the non-indigenous peasants have had difficulty in having their rights legalized through the acquisition of title and land registration. When, in exceptional cases, they have been able to have their rights legalized, they have not had access to legal mechanisms to defend them. Since this problem is not exclusive to the indigenous population – although the latter has been particularly affected – it should be dealt with in the context of “Social and economic issues and the agrarian question”, as one of the considerations to be taken into account in connection with the reform of the land tenure structure.

3. However, the situation with regard to the particular lack of protection and plundering of indigenous communal or collectively held lands merits special attention within the framework of this agreement. The Guatemalan Constitution establishes the obligation of the State to give special protection to cooperative, communal or collectively-held lands; recognizes the right of indigenous and other communities to maintain the system of administration of the lands which they hold and which historically belong to them; and lays down the obligation of the State to provide State lands for the indigenous communities which need them for their development.

4. Recognizing the special importance which their relationship to the land has for the indigenous communities, and in order to strengthen the exercise of their collective rights to the land and its natural resources, the Government undertakes to adopt directly, when that is within its competence, and to promote, when that is within the competence of the legislative organ or the municipal authorities, the following measures, *inter alia*, which shall be implemented in consultation and coordination with the indigenous communities concerned.

#### **Regularization of the land tenure of indigenous communities**

5. The Government shall adopt or promote measures to regularize the legal situation with regard to the communal possession of lands by communities

which do not have the title deeds to those lands, including measures to award title to municipal or national lands with a clear communal tradition. To that end, an inventory of the land tenure situation shall be drawn up in each municipality.

#### **Land tenure and use and administration of natural resources**

6. The Government shall adopt or promote the following measures:

(a) Recognize and guarantee the right of access to lands and resources which are not occupied exclusively by communities but to which the latter have historically had access for their traditional activities and their subsistence (rights of way, such as passage, wood-cutting, access to springs, etc., and use of natural resources) and for their spiritual activities;

(b) Recognize and guarantee the right of communities to participate in the use, administration and conservation of the natural resources existing in their lands;

(c) Secure the approval of the indigenous communities prior to the implementation of any project for the exploitation of natural resources which might affect the subsistence and way of life of the communities. The communities affected shall receive fair compensation for any loss which they may suffer as a result of these activities; and

(d) Adopt, in cooperation with the communities, the measures necessary for the protection and preservation of the environment.

#### **Restitution of communal lands and compensation for rights**

7. Recognizing the particularly vulnerable situation of the indigenous communities, which have historically been the victims of land plundering, the Government undertakes to institute proceedings to settle the claims to communal lands formulated by the communities and to restore or pay compensation for those lands. In particular, the Government shall adopt or promote the following measures:

(a) Suspend the awarding of supplementary titles in respect of property to which the indigenous communities have claimed a right;

(b) Suspend the statute of limitations in respect of any action involving the plundering of the indigenous communities; and

(c) When the statute of limitations has already expired, however, establish procedures to compensate the communities which have been plundered with lands acquired for that purpose.

#### **Acquisition of land for the development of indigenous communities**

8. The Government shall take the necessary measures, without detriment to peasant smallholdings, to discharge its constitutional mandate to provide State lands for the indigenous communities which need them for their development.

#### **Legal protection of the rights of indigenous communities**

9. In order to facilitate the defence of the aforementioned rights and to protect the communities effectively, the Government undertakes to adopt or promote the following measures:

(a) Develop legal rules recognizing the right of indigenous communities to administer their lands in accordance with their customary norms;

(b) Promote an increase in the number of courts dealing with land cases and expedite procedures for the settlement of those cases;

(c) Urge faculties of law and the social sciences to strengthen the agrarian law component of the curriculum and include a knowledge of the relevant customary norms;

(d) Establish competent legal advisory services to advise on land claims;

(e) Provide the indigenous communities with the services of interpreters, free of charge, in respect of legal matters;

(f) Promote the widest dissemination, within indigenous communities, of information about land rights and the legal recourses available; and

(g) Eliminate any form of discrimination against women, in fact or in law, with regard to facilitating access to land, housing, loans and participation in development projects.

10. The Government undertakes to give the fulfilment of the undertakings set out in this section F the priority which the situation of insecurity and urgency that characterize the land problems of the indigenous communities deserves. To that end, the

Government shall, in consultation with the indigenous peoples, establish a joint commission on the rights relating to land of the indigenous peoples to study, devise and propose more appropriate institutional arrangements and procedures. The commission shall be composed of representatives of the Government and of indigenous organizations.

[. . .]

### **2.8. Croatia – The Erdut Agreement (1995)**

#### **BASIC AGREEMENT ON THE REGION OF EASTERN SLAVONIA, BARANJA, AND WESTERN SIRMIMUM**

The Parties agree as follows:

1. There shall be a transitional period of 12 months which may be extended at most to another period of the same duration if so requested by one of the parties.

2. The U.N. Security Council is requested to establish a Transitional Administration, which shall govern the Region during the transitional period in the interest of all persons resident in or returning to the Region.

3. The U.N. Security Council is requested to authorize an international force to deploy during the transitional period to maintain peace and security in the Region and otherwise to assist in implementation of this Agreement. The Region shall be demilitarized according to the schedule and procedures determined by the international force. This demilitarization shall be completed not later than 30 days after deployment of the international force and shall include all military forces, weapons, and police, except for the international force and for police operating under the supervision of, or with the consent of, the Transitional Administration.

4. The Transitional Administration shall ensure the possibility for the return of refugees and displaced persons to their homes of origin. All persons who have left the Region or who have come to the Region with previous permanent residence in Croatia shall enjoy the same rights as all other residents of the Region. The Transitional Administration shall also take the steps necessary to re-establish the normal functioning of all public services in the Region without delay.

5. The Transitional Administration shall help to establish and train temporary police forces, to build