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# FORCED DISPLACEMENT AND HOUSING, LAND, AND PROPERTY OWNERSHIP CHALLENGES IN POST- CONFLICT AND RECONSTRUCTION

INPROL Consolidated Response (09-003)

With contributions from Yolande Bouka, J. O'Neil G. Pouliot, and Sermid D. Al-Sarraf.



Prepared by Andrew Solomon

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OWNERSHIP CHALLENGES IN POST-CONFLICT AND RECONSTRUCTION  
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The full text of the responses provided by these INPROL members can be found at <http://www.inprol.org/node/3788>. INPROL invites further comment by members.

**Note:** All opinions stated in this consolidated response have been made in a personal capacity and do not necessarily reflect the views of particular organizations. INPROL does not explicitly advocate policies.



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## **FORCED DISPLACEMENT AND HOUSING, LAND, AND PROPERTY OWNERSHIP CHALLENGES IN POST-CONFLICT AND RECONSTRUCTION**

### **Background:**

Post-conflict reconstruction and stabilization requires providing protection and assistance to internally displaced persons (IDPs) who have been uprooted from their homes and communities and consequently made vulnerable to violence, exploitation, discrimination, and other human rights violations. Responses to forced displacement should include finding durable solutions for those dispossessed of their homes, land, and other property. Many of the displaced cannot return and reintegrate because their homes and land are occupied by others who are themselves unwilling or unable to settle elsewhere. Enforcing property rights and resolving ownership disputes can be an incredibly complex endeavor, one with policy as well as legal dimensions. It can be especially challenging in countries with less formalized legal and judicial systems. This Consolidate Response will review the relevant international standards and best practices for guaranteeing and protecting the housing, land, and property rights of internally displaced persons based on the queries and responses of rule of law practitioners from the INPROL membership.

### **Query:**

Very few of Iraq's 4.9 million refugees and internally displaced persons have exercised their right to return to their homes. Some would like to do so in the near term, but are constrained by secondary occupants in their homes and the lack of effective enforcement mechanisms. Others are waiting for the security situation to improve before returning home. Others believe it may never be safe to return home, given the changed character of their neighborhoods and the nature of threats made before or since they left. Experience in other countries shows that regular courts often cannot handle the volume of property cases arising from displacement. With this in mind, I have developed the idea of the Peace-at-Home Trust to return the homes of displaced households in Iraq to the effective control of their lawful owners so they may choose how to use, manage or dispose of their homes. A concept paper for this trust is attached. I would welcome comments and in particular any relevant experience in other countries. Please find the concept paper [here](#). A simple model of the concept can also be found [here](#).

### **Response Summary:**

#### **Who is an IDP?**

Internally displaced persons (IDPs) are "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border." (Guiding Principles on Internal Displacement, Introduction, para. 2).

The two most important questions to keep in mind for purposes of identifying who is an internally displaced person are 1) is the nature of the individual's movement involuntary or coerced and 2) has the individual crossed an international border? IDPs do not choose to leave their communities on their own accord. They are instead forced to flee. Their movement is involuntary. In this regard, IDPs can be distinguished from economic migrants who choose to seek employment and an improved livelihood elsewhere. Also, while IDPs are forced from their homes and communities, they remain within the borders of their country of residence. They do not leave the country.

It is important to note that IDPs should not be confused with refugees. "Refugee" is a legal term of art applied to and used to identify the rights and responsibilities of individuals who cross an internationally recognized border in search of safety from persecution. By definition, IDPs stay within the borders of their own country and under the jurisdiction of national laws and policies. Unlike refugees, IDPs remain citizens or habitual residents of their country and are entitled to protection and assistance on that basis alone. IDPs experience what may be thought of as refugee-like situations, yet they are a fundamentally different population with fundamentally different protection and assistance needs.

National authorities have the primary responsibility for addressing these needs and for securing the safety and well being of persons displaced within their borders. However, they sometimes lack the capacity or willingness to fulfill this sovereign responsibility, particularly during ongoing situations of conflict, violence, and disaster. As a result, IDPs lead very insecure and unsafe existences and are highly vulnerable to human rights violations—sometimes at the hands of agents of the state that is responsible for their protection.

In contrast to IDPs, refugees enjoy relative safety and benefit from the protections of international refugee law (the 1951 Refugee Convention) which purposefully obliges receiving and host governments to meet the basic social needs of refugees and to refrain from returning them to their country of origin against their will in accordance with the principle of non-refoulement. Similarly, refugees are entitled under international refugee law to receive international protection and humanitarian assistance, including access to food, shelter, health care, and education provided by international humanitarian relief organizations and United Nations agencies. Internally displaced persons do not fit the definition of refugee, and therefore, they may not avail themselves of these protections.

### **Displacement Facts and Figures**

Estimates of the total number of displaced persons world-wide can vary. However, most authoritative sources put the number of conflict-induced IDPs in 2007 at roughly 26 million. This number is up from 19 million in 1990 and can partly be explained by a surge in internal armed conflicts that followed end of the Cold War. Most IDPs are found in Africa, where at least 12 million people are displaced within their own countries at the present time. Africa is not alone in experiencing large-scale displacement though. There are significant numbers of IDPs in all regions and in more than 50 countries around the world. The largest IDP populations are located in Sudan (5 million), Colombia (2.5-3 million), Iraq (2-2.5 million), Uganda (1.5 million), and the Democratic Republic of the Congo (1-1.5 million).

Conflict is only one of several displacement triggers. Displacement also occurs as a consequence of natural and man-made disasters and development projects. Natural disasters, such as tsunamis and earthquakes, as well as protracted draughts and extensive flooding, displace tens of millions of persons per year. Recent IDP generating natural disasters include: the Sichuan earthquake in China (4.8 million), the Northern Pakistan earthquake of 2005(3.5 million), the Asian tsunami of 2004 (1.6 million), and Hurricane Katrina in the United States (800,000). In 2007, the total number of persons displaced as a result of natural disasters amounted to 26 million. Disaster induced IDPs combined with those displaced from armed conflict, situations of generalized violence, and development projects make up close to 1 percent of the world's total population. Notably, the world's refugee population, including Palestinian refugees, is thought to number about 16 million, well below the overall number of 52 million IDPs.

### **Vulnerabilities and Needs of the Displaced**

IDPs are subject to heightened vulnerabilities in areas of personal safety, human rights, and livelihoods. They are often unable to escape the effects of armed conflicts and can fall victim to the violence. Women and children, who make up the majority of IDPs, face an acute risk of sexual exploitation and abuse. In addition, IDPs are often in need of protection and assistance in finding adequate shelter, food, medical treatment, and employment. They also suffer discrimination as a result of being displaced and can be denied access to government services and the right to vote and participate in public life. The loss, destruction or confiscation of identity, and other important personal documentation is a common occurrence in situations of displacement as well. IDPs also face an especially high risk of losing ownership of their housing, property, and land. This dispossession can lead to loss of livelihoods and economic security as well as physical security.

### **International Standards and IDP Protections**

There are no internationally binding legal instruments dedicated to protecting the internally displaced. IDPs are not afforded any special status in international law. However, they do enjoy the rights and freedoms guaranteed to all individuals by international human rights and humanitarian law. Those particularly germane to internally displaced persons have been compiled in the United Nations Guiding Principles on Internal Displacement, which have been endorsed by the UN General Assembly and recognized by the 2005 World Summit Outcome Document as the most important international framework for IDP protection.

The Guiding Principles do not create new law. They restate existing rights and freedoms found in binding instruments—such as the International Covenant on Civil and Political Rights, International Covenant on Economic, Social, and Cultural Rights, Convention Against Torture, Geneva Conventions, and the Universal Declaration on Human Rights—and customary international law and interpret them in the context of IDP vulnerabilities and protection needs. These rights and freedoms are grouped into the following four areas:

- Rights related to physical security and integrity (e.g., rights to life, integrity and dignity of the person; freedom from arbitrary detention, torture, sexual abuse, and exploitation);

- Rights related to basic necessities of life (e.g. rights to food, potable water, health, shelter, etc.);
- Rights related to civil and political protection (e.g., rights to personal documentation, political participation, access to courts and justice, and freedom from discrimination); and
- Rights related to economic, social, and cultural protection (e.g., rights to employment, education, restitution, and compensation for lost property).

In addition to articulating how these rights apply once a person has been displaced, the Guiding Principles describe guarantees against arbitrary displacement and rights IDPs have to finding dignified and durable solutions to their displacement.

The Guiding Principles make clear that national governments, not the international community, have the primary duty to guarantee and protect the rights of internally displaced persons through domestic laws and policies. This duty is based on the notion that with sovereignty comes responsibility. Although states have the right to conduct their internal affairs without interference, they must do so in a way that protects the rights of their population, including displaced persons. Since they were adopted in 1998, dozens of countries have used the Guiding Principles to develop legal and policy frameworks that address displacement and IDP rights.

### **Housing, Land, and Property Rights**

In matters of housing, land, and property, the General Principles affirm the general right that all individuals have to be protected against being arbitrarily displaced from their homes or residences (Guiding Principle 6). Moreover, the Principles set forth the responsibility of national governments to support the property rights of internally displaced persons so they may voluntarily return to their homes or resettle elsewhere: and when these rights have been violated, the Guiding Principles affirm the right of IDP's to substantive reparations.

Guiding Principle 29(2) states, “[c]ompetent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions when they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.” In so doing, the Guiding Principles have played an important role in articulating emerging norms and remedies to address displacement-related property issues in post-conflict environments. The Principles have also assisted national authorities and others working on reconstruction and stabilization to fill gaps that exist in national law and policy. This includes the right to property restitution and remedies.

The housing, land, and property rights of all displaced persons, including the right to remedies, were further strengthened with the adoption of the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons in 2006. This document, often referred to as the Pinheiro Principles, is the first international standard focused exclusively on property-related rights for the displaced. It affirms the overarching rights that all displaced persons enjoy, i.e. non-discrimination (Principle 3),

gender equality (Principle 4), protection from displacement (Principle 5), privacy and respect for the home (Principle 6), peaceful enjoyment of possessions (Principle 7), adequate housing (Principle 8), freedom of movement (Principle 9), and voluntary return (Principle 10).

Most notably, the Pinheiro Principles articulate the right of all displaced persons to property and housing restitution (Principle 2). In accordance with this Principle, IDPs and refugees have the right “to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.” (Principle 2.1) It also describes the right to restitution, which refers to the return of lost property to its lawful owner, as a distinct right and as the preferred remedy in response to the illegal or arbitrary dispossession of housing, land, or property. Adequate and fair compensation may also serve as a legitimate remedy in cases where restitution is not possible.

### **Contexts and Challenges**

There are a variety of challenges to housing, land, and property rights that arise in the context of conflict-induced displacement. They range from redressing the past politicization and ethnization of property ownership and customary land regimes that discriminate against women and minorities to overcoming land scarcity, soil degradation, and massive destruction of housing and public services such as plumbing and electrical networks. In some situations of mass displacement, IDPs seeking to return to their homes and land must first evict squatters and post-displacement occupants, some of whom may have unknowingly acquired title to property on the basis of fraudulent and forged sales transactions. Others must contend with having sold or transferred title to their property under circumstances of extreme duress or coercion.

### **Legal and Policy Frameworks and Best Practices**

Protecting the housing, land, and property rights of IDPs during post-conflict reconstruction and stabilization can be a highly complex undertaking, one requiring the development of legal and policy frameworks. At a minimum, these frameworks should contain the following basic elements:

- Prohibitions on destruction, unlawful use, occupation, and arbitrary appropriation of IDP homes, land, and property along with basic measures to safeguard IDP property throughout the period of displacement;
- Clear articulation of the property rights of internally displaced persons, including the right to restitution, compensation, and other forms of reparations; and
- Establishment of efficient mechanisms to mediate and resolve disputes, restore the property rights of IDPs, and provide remedies when these rights have been violated.

Although regular courts and adjudicatory bodies can be used to resolve property disputes, situations of mass displacement may necessitate the creation of ad hoc property commissions to process large numbers of claims. The following techniques and

facilitated procedures may be used to process these claims, particularly where common or generalized patterns of displacement are evident:

- Limited and expedited procedures for fact finding, including use of presumptions;
- Reduced evidentiary burdens that favor IDP claimants by allowing less formal and alternative forms of evidence to prove ownership; and
- Standardized compensation formulas to quickly and consistently establish property values and provide cash or in-kind awards, when restitution is either impossible or impractical.

Other measures and best practices in addressing housing, land, and property issues following displacement include:

- Reform of property and inheritance laws to allow women and minorities to hold title to housing, land, and property without discrimination of any kind;
- Invalidation of coerced transfers and contracts to sell or exchange housing, land, and property made under duress;
- Public education and “know your property rights” campaigns that describe rights, remedies, and procedures related to resolving property disputes;
- Availability of free or affordable legal assistance and easy access to mediation and dispute resolution mechanisms for IDPs and post-displacement occupants of disputed property;
- Reliance on customary or informal dispute resolution systems, as a response to insufficient state capacity, must be accompanied by efforts to ensure due process and human rights standards;
- Authorization of law enforcement and local officials to execute court judgments and property commission decisions in property matters; and
- Providing temporary allocation of and/or permanent transfer of ownership of state owned land to IDPs.

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## **Compilation of Resources:**

*This Consolidated Response draws from many of the following resources, which are useful reference tools for policing practitioners. All listed documents with a hyperlink are uploaded to the INPROL Digital Library.*

### International and Regional Standards



- [Returnee Land Access: Lessons from Rwanda](#)
- [UN Guiding Principles on Internal Displacement](#)
- [UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, the Pinheiro Principles](#)
- [UN Basic Principles and Guidelines and Guidelines on Development-Based Evictions and Displacement](#)
- [UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations](#)
- [Universal Declaration of Human Rights](#)
- [International Covenant on Civil and Political Rights](#)
- [Convention on the Elimination of All Forms of Discrimination Against Women](#)
- [Rome Statute of the International Criminal Court](#)
- [4th Geneva Convention Relative to the Protection of Civilian Persons in Time of War](#)
- [ICRC List of Customary Rules of Humanitarian Law](#)

#### Other Relevant International Instruments and Norms

- [Universal Declaration of Human Rights, Article 17 \(1\) and \(2\)](#)
- [International Covenant on Civil and Political Rights](#)
- [Convention on the Elimination of All Forms of Discrimination Against Women, Article 16 \(1\)\(h\)](#)
- [Rome Statute of the International Criminal Court](#), see, for example, Article 7 Paragraph 2(a)(iv)
- [Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War](#), see Article 49 paragraph 2, Article 53.
- [ICRC List of Customary Rules of Humanitarian Law](#), see mainly Rules 49-52; see also Rules 7, 8, 9, 11, 12, 133.

#### Domestic Laws, Policies, and Best Practices

- Colombia, [Decree 1660 of 2007. Regarding the exchange of land owned by people living in displacement, and other provisions](#) (Spanish)
- Bosnia and Herzegovina, [Law on Displaced Persons and Returnees in BiH](#)
- Kosovo, [UNMIK Regulation No. 2000/60 on Residential Property Claims and the Rules of Procedure and Evidence](#)
- Turkey, [Decision No. 2004/7955 Regulation on Compensation of Losses Resulting from Terrorist Acts and Measures Taken Against Terrorism](#)
- For More Domestic Laws and Policies, see: [National Laws and Policies Database](#), Brookings-Bern Project on Internal Displacement

#### Guides and Other Resources

- [Addressing Housing, Land and Property Issues Arising from Post-2003 Displacement and Return](#), USIP-World Bank Joint Workshop Materials, July 2008
- [Addressing Internal Displacement: A Framework for National Responsibility](#), Brookings-Bern Project on Internal Displacement, April 2005

- [Annotations to the Guiding Principles on Internal Displacement](#), Walter Kälin, Brookings-Bern Project on Internal Displacement and the American Society of International Law, 2007
- [Checklist on the Restitution of Housing and Property](#), UN High Commissioner for Refugees, November 2001
- [Gender and Property Rights Within Postconflict Situations](#), Issue Paper No. 12, USAID, April 2005
- [Handbook for the Protection of Internally Displaced Persons](#), Global Protection Cluster Working Group, December 2007
- [Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the Pinheiro Principles](#), United Nations, March 2007
- [Housing, Land, and Property and Conflict Management: Identifying Policy Options for Rule of Law Programming](#), Agnes Hurwitz, Kaysie Studdard, and Rhodri Williams, International Peace Academy, October 2005
- [Land and Conflict: A Tool Kit for Intervention](#), USAID, 2004
- [Protecting Internally Displaced Persons: A Manual for Law and Policymakers](#), Brookings-Bern Project on Internal Displacement, The Brookings Institution, October 2008
- [USAID Assistance to Internally Displaced Persons](#), USAID Policy PD-ACA-558, USAID, October 2004
- [USAID Land Law Program II—Timor Leste, Final Report](#), USAID, April 2006
- [When Displacement Ends: A Framework for Durable Solutions](#), Brookings-Bern Project on Internal Displacement and Georgetown University Institute for the Study of International Migration, September 2007

#### Reports, Journal Articles, and Academic Papers

- [Constructing Sustainable Reconciliation: Land, Power, and Transitional Justice in Post-Genocide Rwanda](#), Zinaida Miller
- [The Contemporary Right to Property Restitution in the Context of Transitional Justice](#), Rhodri Williams, International Center for Transitional Justice, May 2007
- [Drawing a Line Under the Crisis: Reconciling Returnee Land Access and Security in Post-Conflict Rwanda](#), Dr. John W. Bruce, Humanitarian Law Policy Group Background Briefer, Overseas Development Institute, June 2007
- [Housing and Property Restitution and IDP Return in Kosovo](#), Anneke Rachel Smit, *International Migration*, Vol. 44 (3), 2006
- [Land Policy in Post-Conflict Circumstances: Some Lessons from East Timor](#), Daniel Fitzpatrick, UNHCR, February 2002
- [Land Reform, Land Scarcity, and Post-conflict Reconstruction: A Case Study of Rwanda](#), Herman Musahara and Chris Huggins
- [The Naked Land: The Dayton Peace Accords, Property Disputes, and Bosnia's Real Constitution](#), Timothy William Walters, *Harvard International Law Review*, Vol. 40, No. 2, Spring 1999
- [Resolution of Property Disputes in Bosnia and Kosovo: The Contribution to Peacebuilding](#), Leopold Von Carlowitz, *International Peacekeeping*, Vol. 12, No. 4, Winter 2005
- [Returnee Land Access: Lessons from Rwanda](#), Dr. John W. Bruce, Humanitarian Law Policy Group Background Briefer, Overseas Development Institute, June 2007
- [The Significance of Property Restitution to Sustainable Return in Bosnia and Herzegovina](#), Rhodri Williams, *International Migration*, Vol. 44 (3), 2006

- [Iraqi Refugees and Internally Displaced Persons: A Deepening Humanitarian Crisis?](#), *Congressional research Reports for the People*, August 2008.

#### Useful Internet Sites

- Brookings-Bern Project on Internal Displacement <http://www.brookings.edu/projects/idp>
- Centre on Housing Rights and Evictions (COHRE) <http://www.cohre.org>
- Forced Migration Review <http://www.fmreview.org>
- Global Database on the Guiding Principles on Internal Displacement <http://www.idpguidingprinciples.org/>
- Housing and Land Rights Network <http://www.hlrn.org/>
- International Displacement Monitoring Centre (IDMC) <http://www.internal-displacement.org/>
- Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons <http://www2.ohchr.org/english/issues/idp/index.htm>
- Special Rapporteur on the Right to Adequate Housing <http://www2.ohchr.org/english/issues/housing/index.htm>
- United Nations Office for the Coordination of Humanitarian Affairs (OCHA) <http://ochaonline.un.org/>
- United Nations Office of the High Commissioner for Human Rights (OHCHR) <http://www.ohchr.org/>
- United Nations High Commissioner for Refugees <http://www.unhcr.org>
- United Nations Inter Agency Standing Committee <http://www.humanitarianinfo.org/iasc/>

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