

## HLP and durable solutions

The concept of housing, land and property (HLP) rights is underpinned by international standards of human rights law, primarily related to the right to adequate housing, but also civil and political rights such as the protection of property, the peaceful enjoyment of possessions and non-interference with one's home.

→ A number of international instruments are relevant to HLP:

- The International Covenant on Civil and Political Rights, 1966
- The International Covenant on Economic, Social and Cultural Rights, 1996
- The Guiding Principles on Internal Displacement, 1998
- The Principles on Property Restitution for Refugees and Displaced Persons, 2005, also known as the Pinheiro Principles
- The Great Lakes Protocol on the Property Rights of Returning Populations, 2006
- The UN Basic Principles and Guidelines on Development-based Evictions and Displacement, 2007
- The UN Guiding Principles on Security of Tenure for Urban Poor, 2013
- The Food and Agriculture Organisation (FAO) Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, 2012

The notion of HLP rights is also relevant to the protection of other basic rights, including the right to life, the right to dignity and physical mental and moral integrity, the right to family life and the right to health. It embraces a wide range of entitlements beyond property.

HLP rights refer to legal categories derived from both statutory and customary law, and which guarantee individuals the right to exclusive, joint or limited control and transfer of property, and forms of collective ownership or use.

### ❖ The relevance of HLP in achieving durable solutions

Effective and accessible mechanisms to address HLP issues such as compensation for property that has been lost, damaged or destroyed and the restitution of occupied land are key to achieving durable solutions.

The IASC framework makes HLP rights one of the four core criteria that should be addressed in all displacement situations. Their restoration may also be instrumental in fulfilling other criteria, because they also help to guarantee safety, security and adequate livelihoods and standards of living. They ensure that former IDPs to have a place to live, and can farm and earn an income. Security of tenure without fear of eviction allows people to rebuild economic, political, cultural and social relationships.

### ❖ HLP dispute mechanisms

Restitution and compensation processes can be complex and time consuming. As such it is important that IDPs are able live in safety and security while waiting for mechanisms to run their course. These can take various forms, including:

→ Judicial

- Traditional
- Administrative
- Ad hoc

The most appropriate mechanism, or combination of mechanisms, will be determined by the specifics of each displacement situation. When land tenure is subject to customary regulation, it is difficult to envisage a solution that does not rely on traditional mechanisms for resolving disputes.

These have both pros and cons. On the one hand, traditional mechanisms tend to be more easily accessible to people with specific needs, and better adapted to local conditions. On the other, women and people perceived as outsiders may be excluded from restitution and other remedies. Nor do customary systems always have the capacity to provide effective redress. To avoid the risk of abuses, traditional adjudicators should be trained on national legislation and IDPs made aware of their rights under it.

In **Burundi**, an ad hoc mechanism was set up to address HLP issues that brings traditional and official authorities together to resolve property disputes through restitution, compensation or the sharing of land. The national commission for land and other property (*commission nationale des terres et autres biens*, CNTB) was envisaged by the 2000 Arusha Peace and Reconciliation Agreement. It was set up in 2003 as the primary institution in the field of land and property rights for returning IDPs and refugees. A special court for land and other property (*cour spéciale des terres et autres biens*), was established in 2014 as the only institution of appeal against CNTB decisions.

In **Bosnia and Herzegovina**, property restitution was based on post-war legislation that set up commissions in each municipality to implement the procedures envisaged. Given significant resistance among local authorities to restitution, the international community used its binding powers under the Dayton Peace Agreement to impose legislation, monitor its implementation and remove obstructive officials.

The peace agreement created an ad hoc body to address claims - the commission for real property claims of displaced persons and refugees (CRPC) – but the failure to integrate it into Bosnian institutions made implementation difficult. This was resolved by transferring CRPC's caseload to the municipal commissions.

#### ❖ **Restitution vs compensation**

Restitution tends to be the preferred way of facilitating durable solutions. Pinheiro principle 2.2 sees it is applicable regardless of whether people choose to return or not. It states: “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 HLP.”

The Pinheiro Principles also favour the return of lost property to the rightful owner over compensation, because it may redress a wrong done at the time of displacement or during it. They also see restitution as supporting return and reintegration by guaranteeing shelter and livelihood opportunities.

That said, it may not be practical or appropriate if HLP tenure and use before to displacement was unfair, contested or unsustainable. In such cases neither restitution nor compensation

can fully address HLP issues in the long term, and broader land reform is needed to ensure equitable access to land.

Compensation may be explored in lieu of restitution when the physical recovery of HLP is impossible or impractical. This may happen in the following circumstances:

- ➔ The restoration of HLP is impossible. This may be because of insecurity, or because property has been damaged or destroyed. In the latter case, land can be restituted with compensation in the form of reconstruction assistance.
- ➔ Those theoretically entitled to restitution freely express their preference for compensation.
- ➔ An independent decision is taken by a third party those has no vested interest in the process.

### **Cyprus**

The European Court of Human Rights ordered the Turkish government to establish a remedy for people dispossessed of their property in northern Cyprus from 1963 onwards. In 2006, the Turkish authorities in the north of the island set up a commission to that end. The immovable property commission offers restitution, compensation, exchange or a combination of the three. The approach is realistic because return is not physically possible for people displaced to southern Cyprus. Those who wish to return can still choose restitution to be realised when northern Cyprus is open to their doing so.

The commission is not able to resolve HLP issues across the island as a whole, but it is a positive step because it recognises Greek Cypriot property rights after decades of displacement.