

Challenges and lessons learned on land restitution in international contexts

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issues

Overview of presentation

Background: Linkages between land conflict and displacement

Land restitution

I. Why?

II. What is housing, land and property?

III. How to design and implement HLP restitution? Guidance and challenges (normative, institutional, political, social, eco)

IV. Thematic focus: rights of occupants, indigenous people, land grabbing

Beyond restitution (compensation, land titling, redistributive justice)

Lessons learned

Background: Linkages between land conflict and displacement

- Land as a cause of conflict and displacement
- Housing, land and property issues as a result of displacement
- Land dispossession as an obstacle to durable solutions to displacement, peace and reconciliation

I. Why land restitution? Objective

I. A means to an aim:

- Supporting DS to displacement: the return bias (Bosnia, South Africa)
- Framework for DS to displacement: relevance of HLP to DS, free choice of DS
- Supporting peace-building and reconciliation (peace agreements)

II. A right per se: a remedy and element of transitional justice

- Peace based on justice: principled approach
- Acknowledgement of violations, accountability
- Remedy for dispossession and displacement


Why restitution? Legal basis

- ✓ Basic principles and guidelines on right to a remedy (2006)
- ✓ Civil and political rights (ICCPR), economic social and cultural rights (ICESCR), ILO Conv 169, CEDAW, CRC
- ✓ Guiding principles on internal displacement (1998)
- ✓ Guiding principles on property restitution for refugees and displaced persons (Pinheiro principles) 2005

Housing, land and property: Pinheiro principles

- **Same concept as GPID:** do not create new rights but bring together relevant principles pertaining to housing, land and property rights of displaced persons and refugees.
- **Difference :** add principles based on good practices from various property restitution programmes.
- **New: HLP rights broadens scope of restitution to non owners (informal land rights holders and tenants)**
 - Right to adequate housing, including security of tenure
 - Right to privacy and respect for the home
 - Right to the peaceful enjoyment of possessions
- **Restitution as preferred remedy**
 - Leave all options of durable solutions open
 - Redress the wrongs done/restorative justice

III. Designing and implementing restitution: guidance and challenges



- A. Normative and legal aspects
- B. Institutional aspects
- C. Political, social and economic dimension
- D. Thematic focus

A. Normative and legal aspects

- ✓ Define purpose of HLP restitution programme
 - Return, transitional justice? Turkey and Bosnia examples
- ✓ Complementarity with other forms of reparations
- ✓ Ensure consistency with broader, long-term land development efforts
- ✓ Principles
 - Non discrimination, equality between men and women
 - Conformity with national and international standards
 - Right of appeal
 - Consultation
 - Rights of occupants: alternative accommodation, cash for rent

Normative and legal aspects

✓ **Scope and admissibility issues**

- Types of rights covered
- Time and geographic scope
- Collective claims
- Deadline for application

✓ **Procedures**

- Accessibility: mobile teams to collect claims
- Exemption of fees for IDP (doc and restitution claims)
- Flexibility: alternative evidence
- Alleviate or shift burden of proof
- Enforcement

Normative aspects

Substantive aspects/ Essential elements

- ✓ Recognize rights of IDPs to abandoned property
- ✓ Take basic steps to secure abandoned property against destruction or appropriation
- ✓ Develop “facilitated” procedures to restore IDPs’ property rights, or if no resources exist:
- ✓ Support informal dispute resolution mechanisms capable of upholding IDPs’ property rights

Normative aspects

Protection of property

- ✓ Order police and military to maintain civil order in the affected area and prevent destruction or appropriation
- ✓ Secure all property records and documentation
- ✓ Temporarily suspend legal transfers of property title in the affected area
- ✓ Suspend state land concessions in displacement areas except for humanitarian purposes
- ✓ Regulate by law temporary allocation of abandoned property

Challenges to normative and legal aspects

- ✓ Informal land rights: community mapping, witnesses
- ✓ Review legislation and repeal discriminatory or unjust laws contributing to dispossession (Bosnia, Croatia, Guatemala)
- ✓ Amend legislation which discriminates against IDP (Côte d'Ivoire)
- ✓ Ensure consistency of land related legislation to property restitution scheme to avoid contradiction with leg related to land allocation/acquisition, mining, environmental protection, land reform. (Philippines)

B. Institutional aspects

- ✓ Context analysis
 - ✓ Scope of dispossession
 - ✓ Institutional capacity
 - ✓ Obstruction: actors and means
- ✓ Choice of institutions
 - ✓ Judiciary
 - ✓ Administration
 - ✓ Ad hoc body
 - ✓ Traditional/customary bodies
 - ✓ Mix

Institutional aspects: challenges

- ✓ Balance level of procedural guarantees against length of process
- ✓ Adequate training, knowledge and commitment of staff carrying out process
- ✓ Implementation at local level: differing interest
- ✓ Resources: extra staff, cost of process

C. Political, social and economic aspects

Political and social

- ✓ Who lost land and who benefited from the conflict?
- ✓ Relation with power-breakers: armed groups, local officials or politicians, economic
- ✓ Assess capacity of nuisance: obstruction, violence
- ✓ Mitigating the risk: anticipate, compromise or hard approach

Thematic focus: occupants

- ✓ Principle: restitution should not result in making the occupant homeless (right to adequate housing)
- ✓ Assess requirement for alternative accommodation
- ✓ Balance right of occupant and owner based on circumstances to determine adapted approach
 - ✓ Bona fide, length of occupation and investment on land

Thematic focus: indigenous people

- ✓ Group at high risk of dispossession because living in areas with rich natural resources
- ✓ investors, environmental conservation laws
- ✓ Inconsistencies between legislation protecting their land rights and other legislation related to mining, exploitation of natural resources
- ✓ Rights protected by: ILO Convention 169, 2007 Declaration, American Court for Human Right
- ✓ Recognition of their customary land rights and dispute resolution mechanism
- ✓ Right to control and use resources (forest, minerals)
- ✓ FPIC before initiating project in their areas

Thematic focus: land grabbing

- ✓ Widespread global phenomenon threatening holders of customary land rights (IP, small farmers) and leading to land concentration
- ✓ Adapt legal framework to ensure conformity with international standards and guidance and coherence with land restitution and land allocation legislation.
 - ✓ UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)
 - ✓ FAO voluntary guidelines on responsible governance of tenure(2012)
 - ✓ Basic principles on business and HR

Beyond restitution

Limits of restitution

- Difficult to apply in absence of property registration
- When state and local institutions do not have the capacity to carry out a restitution programme
- When unequal access to land was one of the causes to the conflict and corrective measures not undertaken
- In context of insecure tenure (need for wider reform)
- Does not address the needs of IDPs who were homeless or landless
- Protracted displacement: restitution is impractical for security or political reasons

Beyond restitution: compensation

- ✓ when restitution impossible
- ✓ when injured party accepts compensation in lieu of restitution
- ✓ Can be complementary to restitution
- ✓ Can address different losses (destruction, loss of income)
- ✓ Cash or kind
- ✓ Individual or lump sum

Beyond restitution: land titling/land reform

Land titling

- ✓ Aims at securing rights but can actually comprise rights of informal holders and vulnerable groups and result in elite capture.
- ✓ Collective titling vs. individual one
- ✓ Risk if used in lieu of restitution (CI)

Land reform and redistributive justice

Beyond restitution: adequate housing

- ✓ Adequate housing is a right and a state obligation
- ✓ Adapted to situation of protracted and urban displacement when return to rural areas not desired
- ✓ No need for ownership but rather secure tenure
- ✓ Good practices: social housing scheme, regularisation of slums, graduation approach

Lessons learned

- ✓ Very difficult to implement land restitution with conflict ongoing and no political solution to structural land issues such as land inequality which are at root of conflict.
- ✓ HLP restitution should be complemented by humanitarian and economic development efforts and consistent with broader land related legislation
- ✓ Adopt a multi-disciplinary approach to land issues
- ✓ Choice of HLP reparations (restitution, compensation or others) should be informed by need to redress the past and prepare the future
- ✓ Balance what is fair and what is feasible, pragmatism

Lessons learned

- ✓ Need to maintain robust political will during implementation.
- ✓ When progress obtained under international pressure ensure it should be maintained during implementation

THE END

THANK YOU!