

**ANNUAL CONSULTATIONS WITH NGOS  
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**Background Paper**  
**Pinheiro into action: Challenges and way forward in housing, land and property rights – Enhancing partnerships**

*Wednesday 29 June 2011, 14:00 - 15:45, Room 4*

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

*States shall demonstrably prioritise the right to restitution as the preferred remedy for 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”<sup>1</sup>.*

The concept of home is one of the first concepts we learn. “In traditional societies, everything that made sense of the world was real; the surrounding chaos existed and was threatening, but it was threatening because it was unreal. Without a home at the center of the real, one was not only shelterless, but also lost in nonbeing, in unreality. Without a home everything was fragmentation”<sup>2</sup>. Refugees and displaced persons run, leaving not only a property behind, they leave their home, the center of what was real in their lives. When refugees and displaced persons decide to return to their country or city, they usually opt to return to their home, to that same house, same land where their home lies.

In August 2005, the United Nations Sub-Commission on the Promotion and Protection of Human Rights endorsed the Principles on Housing and Property Restitution for Refugees and Displaced Persons (“the Pinheiro Principles”), setting the international standards on restitution of property for refugees and displaced persons. The Pinheiro Principles reaffirm the right to non-discrimination, the right to be protected from displacement, the right to privacy and respect for the home, the right to adequate housing and the right to voluntary return in safety and dignity. Section V of the Principles outlines legal, policy, procedural and institutional implementation mechanisms to ensure that the rights of refugees and displaced persons regarding housing and property are effective.

Making these principles work for the benefit of refugees and displaced persons is challenging. Some of the challenges are due to the destruction of official records proving ownership, the forgery of documents and the unlawful occupation of land by new inhabitants. Addressing these challenges in a post-conflict environment or in an on-going conflict requires a strong

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<sup>1</sup> United Nations Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, Principles 2.1 and 2.2, 2005.

<sup>2</sup> Berger, J. *And Our Faces, My Heart, Brief as Photos*, Writers and Readers, 1984.

institutional leadership and close coordination of all involved actors. Partnership is therefore essential.

Along the years, the issue of land and property rights of returnees has been key in many contexts and countries, ranging from Afghanistan, South Africa, Kosovo, to Uganda, Central America or Colombia. Despite the different environments, the challenges are generally similar.

Restitution, however, is just one of the pieces in this puzzle. Access to rights, prevention of the deprivation of property and tenure of the land are other very important aspects to consider when discussing housing, land and property rights.

The 2011 NGO Consultations Session on Housing and Property Rights aims to discuss some of the current challenges facing refugees and displaced persons and highlight best practices, as well as brainstorming on strategic perspectives. A specific issue to address will be partnership and how actors can join efforts to assist authorities in ensuring the effective access to house, land and property rights as well as the implementation of the Pinheiro Principles.

### **Recommended Readings:**

*An Introduction to the Pinheiro Principles*, COHRE.

<http://www.cohre.org/sites/default/files/pinheiroprinciples.pdf>

*Land Policy in Post-Conflict circumstances: some lessons from East Timor*, Daniel Fitzpatrick, 2002,

<http://www.unhcr.org/cgi-bin/texis/vtx/home/opensslPDFViewer.html?docid=3c8399e14&query=land%20restitution>

*Property Return and Restitution: Kosovo*, COHRE, 2008.

[http://www.cohre.org/sites/default/files/kosovo\\_-\\_property\\_return\\_and\\_restitution\\_report\\_to\\_the\\_cescr\\_march\\_31\\_2008\\_final.pdf](http://www.cohre.org/sites/default/files/kosovo_-_property_return_and_restitution_report_to_the_cescr_march_31_2008_final.pdf)

*Housing and Property Restitution for refugees and Displaced persons: Implementing the Pinheiro Principles*, 2007.

[http://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)

*Handbook for the Protection of Internally Displaced Persons*, Action Sheet 11, 2007.

<http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Protection/Protection%20Handbook/land%20and%20property.pdf>