

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

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.

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

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)

Returning Home: Housing and Property Restitution Rights of Refugees and Internally Displaced Persons (ed., 2003)

National Perspectives on Housing Rights (ed., 2003)

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)

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

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)



Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press

32 Avenue of the Americas, New York, NY 10013-2473, USA

www.cambridge.org

Information on this title: www.cambridge.org/9780521858755

© Cambridge University Press 2007

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2007

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Housing, land, and property restitution rights of refugees and displaced persons : laws, cases, and materials / edited by Scott Leckie.

p. cm.

Includes bibliographical references and index.

ISBN-13: 978-0-521-85875-5 (hardback)

ISBN-10: 0-521-85875-5 (hardback)

1. Restitution. 2. Restitution – Cases. 3. Political refugees – Legal status, laws, etc. 4. Right of property. 5. Repatriation. I. Leckie, Scott. K920.H68 2007

343'.0252 – dc22 2006039212

ISBN 978-0-521-85875-5 hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

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

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

Contents

<i>Acknowledgments</i>	<i>page</i> xvii
<i>Preface</i>	xix
PART ONE. HOUSING AND PROPERTY RESTITUTION STANDARDS – INTERNATIONAL	1
1 International Standards	1
<i>International Humanitarian Law</i>	1
1.1 Hague Convention (IV) Respecting the Laws and Customs of War on Land (1907)	1
1.2 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (1949)	1
1.3 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1977)	2
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)	3
<i>International Human Rights Law</i>	3
1.5 Universal Declaration of Human Rights (1948)	3
1.6 International Convention on the Elimination of All Forms of Racial Discrimination (1965)	4
1.7 International Covenant on Economic, Social and Cultural Rights (1966)	4
1.8 International Covenant on Civil and Political Rights (1966)	4
1.9 Convention on the Rights of the Child (1989)	5
1.10 Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries (1989)	6
<i>International Criminal Law</i>	6
1.11 Rome Statute of the International Criminal Court (1998)	6
<i>International Refugee Law</i>	11
1.12 Convention Relating to the Status of Refugees (1951)	11
1.13 Protocol Relating to the Status of Refugees (1967)	11
<i>The International Law of State Responsibility</i>	12
1.14 International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001)	12
<i>Specific Restitution Standards</i>	13
1.15 'Pinheiro' Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005)	13
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)	20
	vii

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

viii	Contents
2	Peace Agreements 25
2.1	Cambodia – Agreement on a Comprehensive Political Settlement on the Cambodia Conflict (1991) 25
2.2	El Salvador – Peace Agreement between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (1992) 28
2.3	Mozambique – The Rome Process: General Peace Agreement for Mozambique (1992) 30
2.4	Liberia – Cotonou Agreement (1993) 30
2.5	Rwanda – Arusha Peace Agreement (1993) 31
2.6	Bosnia-Herzegovina – General Framework Agreement on Peace in Bosnia-Herzegovina (Dayton Peace Agreement) – Annex 7: Agreement on Refugees and Displaced Persons (1995) 31
2.7	Guatemala – Agreement on Identity and Rights of Indigenous Peoples (1995) 34
2.8	Croatia – The Erdut Agreement (1995) 36
2.9	Tajikistan General Agreement on the Establishment of Peace and National Accord – Protocol on Refugee Issues (1997) 37
2.10	Sierra Leone – Lomé Peace Agreement (1999) 38
2.11	Burundi – Arusha Peace and Reconciliation Agreement for Burundi (2000) 38
2.12	Ethiopia and Eritrea – Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea (2000) 41
2.13	Liberia – Comprehensive Peace Agreement between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties (2003) 43
2.14	Sudan – Comprehensive Peace Agreement – Agreement on Wealth Sharing during the Pre-Interim and Interim Period (2004) 43
3	Voluntary Repatriation Agreements 45
3.1	Socialist Republic of Vietnam and UNHCR (1988) 45
3.2	Republic of South Africa and UNHCR (1991) 46
3.3	Guatemala and UNHCR (1991) 46
3.4	United Republic of Tanzania, Democratic Republic of the Congo and UNHCR (1991) 46
3.5	Islamic State of Afghanistan, Republic of Iran and UNHCR (1992) 47
3.6	Republic of Mozambique, Zimbabwe and UNHCR (1993) 47
3.7	Union of Myanmar and UNHCR (1993) 47
3.8	Abkhazia, Georgia, Russian Federation and UNHCR (1994) 48
3.9	United Republic of Tanzania, Republic of Rwanda and UNHCR (1995) 51
3.10	Republic of Angola and UNHCR (1995) 51
3.11	Republic of Liberia and UNHCR (1996) 52
3.12	Republic of Burundi, United Republic of Tanzania and UNHCR (2001) 52
3.13	The French Republic, the Islamic Transitional State of Afghanistan and UNHCR (2002) 53
3.14	United Kingdom of Great Britain and Northern Ireland, the Transitional Administration of the Transitional Islamic State of Afghanistan and UNHCR (2002) 54
3.15	The Islamic Transitional State of Afghanistan, the Government of the Netherlands and UNHCR (2003) 54
3.16	Republic of Zambia, Republic of Rwanda and UNHCR (2003) 55
3.17	Islamic Republic of Iran, the Islamic Transitional State of Afghanistan and UNHCR (2003) 55
3.18	Republic of Rwanda, Republic of Uganda and UNHCR (2003) 55
3.19	Republic of Burundi, Republic of Rwanda and UNHCR (2005) 56
3.20	Republic of Sudan, Democratic Republic of Congo and UNHCR (2006) 56

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

Contents	ix
4 United Nations High Commissioner for Refugees (UNHCR)	56
4.1 EXCOM Conclusion No. 18 – Voluntary Repatriation (1980)	56
4.2 EXCOM Conclusion No. 40 – Voluntary Repatriation (1985)	57
4.3 EXCOM Conclusion No. 101 – Legal Safety Issues in the Context of Voluntary Repatriation of Refugees (2004)	58
4.4 UNHCR Inter-Office Memorandum No. 104/2001, UNHCR Field Office Memorandum No. 101/2001 – Voluntary Repatriation and the Right to Adequate Housing	61
4.5 Global Consultations on International Protection (2002)	71
5 UN Security Council	73
5.1 Resolution 237 – The Situation in the Middle East (1967)	73
5.2 Resolution 242 – Middle East (1967)	74
5.3 Resolution 361 – Cyprus (1974)	74
5.4 Resolution 674 – Kuwait (1990)	74
5.5 Resolution 687 – Kuwait (1991)	74
5.6 Resolution 752 – Yugoslavia (1992)	75
5.7 Resolution 787 – Bosnia and Herzegovina (1992)	76
5.8 Resolution 820 – Yugoslavia (1993)	76
5.9 Resolution 853 – Azerbaijan (1993)	76
5.10 Resolution 876 – Georgia (1993)	76
5.11 Resolution 947 – Croatia (1994)	76
5.12 Resolution 971 – Georgia/Abkhazia (1995)	76
5.13 Resolution 999 – Tajikistan (1995)	77
5.14 Resolution 1009 – Croatia (1995)	77
5.15 Resolution 1019 – Croatia (1995)	77
5.16 Resolution 1036 – Georgia/Abkhazia (1996)	77
5.17 Resolution 1079 – Croatia (1996)	78
5.18 Resolution 1088 – Bosnia and Herzegovina (1996)	78
5.19 Resolution 1120 – Croatia (1997)	78
5.20 Resolution 1145 – Croatia (1997)	79
5.21 Resolution 1199 – Kosovo (1998)	79
5.22 Resolution 1244 – Kosovo (1999)	80
5.23 Resolution 1287 – Abkhazia and the Republic of Georgia (2000)	80
5.24 Resolution 1339 – Georgia (2001)	81
5.25 Resolution 1357 – Bosnia and Herzegovina (2001)	81
5.26 Resolution 1364 – Georgia (2001)	81
5.27 Resolution 1393 – Georgia (2002)	82
5.28 Resolution 1427 – Georgia (2002)	82
5.29 Resolution 1462 – Georgia (2003)	82
5.30 Resolution 1491 – Bosnia and Herzegovina (2003)	83
5.31 Resolution 1494 – Georgia (2003)	83
5.32 Resolution 1524 – Georgia (2004)	84
5.33 Resolution 1545 – Burundi (2004)	84
5.34 Resolution 1551 – Bosnia and Herzegovina (2004)	85
5.35 Resolution 1556 – Sudan (2004)	85
5.36 Resolution 1575 – Bosnia and Herzegovina (2004)	85
5.37 Resolution 1582 – Georgia (2005)	85
5.38 Resolution 1615 – Georgia (2005)	86

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

x	Contents
6 UN General Assembly	87
6.1 Resolution 8 – Question of Refugees (1946)	87
6.2 Resolution 194 – United Nations Conciliation Commission for Palestine, Protection and a Durable Solution for Palestinian Refugees (1948)	87
6.3 Resolution 394 – Palestine: Progress Report of the United Nations Conciliation Commission for Palestine; Repatriation or Resettlement of Palestine Refugees and Payment of Compensation Due to Them (1950)	89
6.4 Resolution 428 – Statute of the Office of the United Nations High Commissioner for Refugees (1950)	89
6.5 Addendum to Definition of a “Refugee” under Paragraph 11 of the General Assembly Resolution (11 December 1948) (1951)	89
6.6 Resolution 1388 – Report of the United Nations High Commissioner for Refugees (1959)	91
6.7 Resolution 1390 – World Refugee Year (1959)	91
6.8 Resolution 1672 – Refugees from Algeria in Morocco and Tunisia (1961)	91
6.9 Resolution 3212 – Question of Cyprus (1974)	92
6.10 Resolution 3236 – Question of Palestine (1974)	92
6.11 Resolution 35/124 – International Cooperation to Avert New Flows of Refugees (1980)	92
6.12 Resolution 36/146 – United Nations Relief and Works Agency for Palestine Refugees in the Near East (1981)	92
6.13 Resolution 36/148 – International Co-Operation to Avert New Flows of Refugees (1981)	93
6.14 Resolution 37/120 – United Nations Relief and Works Agency for Palestine Refugees in the Near East (1982)	95
6.15 Resolution 40/165 – United Nations Relief and Works Agency for Palestine Refugees in the Near East (1985)	95
6.16 Resolution 48/117 – International Conference on Central American Refugees (1993)	96
6.17 Resolution 48/118 – Assistance to Refugees, Returnees and Displaced Persons in Africa (1993)	96
6.18 Resolution 48/152 – Situation of Human Rights in Afghanistan (1993)	97
6.19 Resolution 49/23 – Emergency International Assistance for a Solution to the Problem of Refugees, the Restoration of Total Peace, Reconstruction and Socio-Economic Development in War-Stricken Rwanda (1994)	98
6.20 Resolution 49/43 – The Situation in the Occupied Territories of Croatia (1994)	98
6.21 Resolution 49/196 – Situation of Human Rights in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) (1995)	98
6.22 Resolution 50/182 – Human Rights and Mass Exoduses (1995)	99
6.23 Resolution 51/114 – Situation of Human Rights in Rwanda (1996)	99
6.24 Resolution 51/126 – Persons Displaced as a Result of the June 1967 and Subsequent Hostilities (1996)	99
6.25 Resolution 55/153 – Nationality of Natural Persons in Relation to the Succession of States (2000)	100
6.26 Resolution 59/117 – Assistance to Palestine Refugees (2004)	100
6.27 Resolution 59/170 – Office of the United Nations High Commissioner for Refugees (2004)	100
6.28 Resolution 59/172 – Assistance to Refugees, Returnees and Displaced Persons in Africa (2004)	101
6.29 Resolution – 60/100 – Assistance to Palestinian Refugees (2005)	101

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

Contents	xi
6.30 Resolution 60/101 – Persons Displaced as a Result of the June 1967 and Subsequent Hostilities (2005)	102
6.31 Resolution 60/103 – Palestine Refugees’ Properties and Their Revenues (2005)	102
6.32 Resolution 60/147 – Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005)	103
6.33 Resolution 60/183 – Permanent Sovereignty of the Palestinian People in the Occupied Palestinian Territory, Including East Jerusalem, and of the Arab Population in the Occupied Syrian Golan over Their Natural Resources (2005)	104
7 UN Commission on Human Rights	105
7.1 Resolution 1993/77 – Forced Evictions (1993)	105
7.2 Resolution 1997/29 – The Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms (1997)	107
7.3 The Guiding Principles on Internal Displacement (1998)	107
7.4 Resolution 1999/33 – The Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms (1999)	108
7.5 Report of the Independent Expert on the Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms, Mr. M. Cherif Bassiouni, Submitted Pursuant to Commission on Human Rights Resolution 1998/43 (1999) (Excerpts)	109
7.6 Resolution 2000/62 – Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2000)	112
7.7 Resolution 2003/34 – The Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms (2003)	113
7.8 Resolution 2004/28 – Prohibition of Forced Evictions (2004)	114
7.9 Resolution 2004/34 – The Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms (2004)	115
7.10 Resolution 2004/55 – Internally Displaced Persons (2004)	116
7.11 Resolution 2005/46 – Internally Displaced Persons (2005)	117
8 UN Sub-Commission on the Protection and Promotion of Human Rights	117
8.1 Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms – Final Report Submitted by Mr. Theo van Boven, Special Rapporteur (1993) (Excerpts)	117
8.2 Resolution 1994/24 – The Right to Freedom of Movement (1994)	119
8.3 Resolution 1995/13 – The Right to Freedom of Movement (1995)	120
8.4 Resolution 1997/31 – The Right to Return (1997)	120
8.5 Resolution 1998/9 – Forced Evictions (1998)	120
8.6 Resolution 1998/26 – Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons (1998)	122
8.7 The Return of Refugees’ or Displaced Persons’ Property – Working Paper Submitted by Mr. Paulo Sérgio Pinheiro (2002)	123
8.8 Resolution 2002/7 – Housing and Property Restitution in the Context of Refugees and Other Displaced Persons (2002)	132
8.9 Resolution 2002/30 – The Right to Return of Refugees and Internally Displaced Persons (2002)	133
8.10 Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons – Preliminary Report of the Special Rapporteur, Paulo Sérgio Pinheiro (2003)	135

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

xii	Contents
8.11 Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons – Progress Report of the Special Rapporteur, Paulo Sérgio Pinheiro (2004)	147
8.12 Resolution 2004/2 – Housing and Property Restitution (2004)	157
8.13 Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons – Final Report of the Special Rapporteur, Paulo Sérgio Pinheiro (2005)	158
8.14 Resolution 2005/21 – Housing and Property Restitution for Refugees and Displaced Persons (2005)	160
9 UN Human Rights Treaty Bodies	160
9.1 Committee on Economic, Social and Cultural Rights	160
9.1.1 General Comment 4 – The Right to Adequate Housing (1991)	160
9.1.2 General Comment 7 – Forced Evictions and the Right to Adequate Housing (1997)	164
9.2 Committee on the Elimination of Racial Discrimination	168
9.2.1 General Recommendation 22 – Article 5 and Refugees and Displaced Persons (1996)	168
9.2.2 General Recommendation 23 – Rights of Indigenous Peoples (1997)	168
9.3 Human Rights Committee	169
9.3.1 General Comment 16 – The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation (Art. 17)(1988)	169
9.3.2 General Comment 27 – Freedom of Movement (1999)	171
10 Additional Standards	174
10.1 The Cairo Declaration of Principles of International Law on Compensation to Refugees (1993)	174
10.2 The Practice of Forced Evictions: Comprehensive Human Rights Guidelines on Development-Based Displacement (1997)	176
PART TWO. HOUSING AND PROPERTY RESTITUTION STANDARDS – REGIONAL	181
1 Africa	181
1.1 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1974)	181
2 Americas	181
2.1 American Convention on Human Rights (1969)	181
2.2 Cartagena Declaration on Refugees (1984)	182
3 Europe	182
3.1 European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)	182
4 Middle East	183
4.1 The Cairo Declaration on Human Rights in Islam (1990)	183
4.2 Declaration on the Protection of Refugees and Displaced Persons in the Arab World (1992)	184
4.3 Arab Charter on Human Rights (1994)	186
PART THREE. HOUSING AND PROPERTY RESTITUTION LAWS AND STANDARDS – NATIONAL	187
1 Afghanistan	187
1.1 Decree on Dignified Return of Refugees (2001)	187
1.2 Decree 89 of the Head of the Transitional Islamic State of Afghanistan, Regarding the Creation of a Special Property Disputes Resolution Court (2003)	188

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

Contents	xiii
2 Albania	189
2.1 Law No. 9235 on Restitution and Compensation of Property (2004)	189
3 Armenia	197
3.1 On the Legal and Socio-economic Guarantees for the Persons Who Had Been Forcibly Displaced from the Republic of Azerbaijan in 1988–1992 and Have Acquired the Citizenship of the Republic of Armenia (2000)	197
4 Azerbaijan	197
4.1 Law on the Social Protection of Internally Displaced Persons and Persons with Equal Status (1999)	197
5 Bosnia-Herzegovina	198
5.1 Law on the Cessation of Application of the Law on the Use of Abandoned Property (Republika Srpska)(1996)	198
5.2 PIC Sintra Declaration (1997)	204
5.3 Office of the High Commissioner, Federation Forum, Chairman’s Conclusions (1997)	205
5.4 Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (Republika Srpska) (1999)	206
5.5 Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (Federation BiH) (1999)	209
5.6 Property Law Implementation Plan (PLIP) Inter-Agency Framework Document (2000)	212
5.7 A New Strategic Direction: Proposed Ways Ahead for Property Law Implementation in a Time of Decreasing IC [International Community] Resources (2002)	222
5.8 PLIP Municipal Guidelines for Substantial Completion of Property Law Implementation (2003)	229
5.9 Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens (Federation BiH) (2003)	230
5.10 Law on the Cessation of the Application of the Law on Abandoned Apartments (Federation BiH) (2003)	237
5.11 Law on the Cessation of Application of the Law on the Use of Abandoned Property (Republika Srpska) (2003)	247
5.12 Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (Federation of BiH) (2003)	263
5.13 Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (Republika Srpska) (2003)	266
5.14 Commission for Real Property Claims of Displaced Persons and Refugees – Book of Regulations on Confirmation of Occupancy Rights of Displaced Persons and Refugees (2003)	269
5.15 Commission for Real Property Claims of Displaced Persons and Refugees – Book of Regulations on the Conditions and Decision Making Procedure for Claims for Return of Real Property of Displaced Persons and Refugees (2003)	277
6 Bulgaria	288
6.1 Restitution of Nationalised Real Property Act (1992)	288
6.2 Decree No. 60 on Applying Article 1, Paragraph 2 of the Restitution of Nationalised Real Property Act (1992)	290
7 Colombia	291
7.1 Decree No. 2007 (2001)	291
8 Estonia	294
8.1 Republic of Estonia Principles of Ownership Reform Act (1991)	294

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

xiv	Contents
9 Georgia	306
9.1 Law of the Republic of Georgia Concerning Internally Displaced People (1996)	306
9.2 Law of Georgia on Property Restitution and Compensation on the Territory of Georgia for the Victims of Conflict in Former South Ossetia District (2006, Draft)	306
10 Germany	317
10.1 Joint Declaration by the Governments of the Federal Republic of Germany and the German Democratic Republic on the Settlement of Unresolved Property Issues (1990)	317
11 Iraq	318
11.1 Coalition Provisional Authority Order Number 6 – Eviction of Persons Illegally Occupying Public Buildings (2003)	318
11.2 Coalition Provisional Authority Regulation Number 4 – Establishment of the Iraqi Property Reconciliation Facility (2004)	319
11.3 Coalition Provisional Authority Regulation Number 12 – Iraqi Property Claims Commission (2004)	320
11.4 Statute of the Commission for the Resolution of Real Property Disputes (2006)	334
12 Kosovo	340
12.1 UNMIK Regulation 1999/10 on the Repeal of Discriminatory Legislation Affecting Housing and Rights in Property (1999)	340
12.2 UNMIK Regulation 1999/23 on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission (1999)	341
12.3 UNMIK Regulation 2000/60 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission (2000)	342
13 Romania	353
13.1 Law No. 112 Regulating the Legal Status of Certain Residential Property (1995)	353
14 Rwanda	354
14.1 Ministerial Order No. 01 – Regarding the Temporary Management of Land Property (1996)	354
15 South Africa	355
15.1 Restitution of Land Rights Act 22 (1994)	355
15.2 South Africa Constitution (1996)	356
16 Tajikistan	357
16.1 The Law of the Republic of Tajikistan on Forced Migrants (1994)	357
16.2 Resolution No. 542 – Additional Measures Facilitating the Return of Refugees-Citizens of the Republic of Tajikistan and Forced Migrants to the Places of Permanent Residence and Their Social and Legal Protection (1995)	358
PART FOUR. HOUSING AND PROPERTY RESTITUTION CASE LAW	359
1 Permanent International Court of Justice	359
1.1 <i>The Factory at Chorzow (Indemnity) Case</i> (1928)	359
2 International Court of Justice	361
2.1 <i>Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory</i> (2004)	361
3 Human Rights Committee	362
3.1 <i>Simunek, Hastings, Tuzilova and Prochazka v. The Czech Republic</i> (1995)	362
3.2 <i>Dr. Karel Des Fours Walderode v. The Czech Republic</i> (1996)	369

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

Contents	xv
3.3 <i>Josef Frank Adam v. The Czech Republic</i> (1996)	373
3.4 <i>Ms. Eliska Fábryová v. The Czech Republic</i> (1997)	378
3.5 <i>Robert Brok v. The Czech Republic</i> (2001)	380
3.6 <i>Miroslav Blazek, George A. Hartman and George Krizek v. The Czech Republic</i> (2001)	384
4 European Court of Human Rights	388
4.1 <i>Sporrong and Lönnroth v. Sweden</i> (1982)	388
4.2 <i>Lithgow and Others v. United Kingdom</i> (1986)	394
4.3 <i>Papamichalopoulos and Others v. Greece</i> (1993)	407
4.4 <i>Loizidou v. Turkey</i> (1996) and <i>Damages</i> (1998)	412
4.5 <i>Zubani v. Italy</i> (1996)	423
4.6 <i>Akdiar and Others v. Turkey</i> (1996) and <i>Damages</i> (1998)	427
4.7 <i>Guillemin v. France</i> (1997)	434
4.8 <i>Brumărescu v. Romania</i> (1999)	437
4.9 <i>Bilgin v. Turkey</i> (2000)	441
4.10 <i>Zwierzyński v. Poland</i> (2001)	443
4.11 <i>Cyprus v. Turkey</i> (2001)	448
4.12 <i>Dulaş v. Turkey</i> (2001)	458
4.13 <i>Orhan v. Turkey</i> (2002)	461
4.14 <i>Zvolský and Zvolská v. The Czech Republic</i> (2003)	461
4.15 <i>Jasiūnienė v. Lithuania</i> (2003)	466
4.16 <i>Pincová and Pinc v. The Czech Republic</i> (2003)	469
4.17 <i>Wittek v. Germany</i> (2003)	477
4.18 <i>Jantner v. Slovakia</i> (2003)	483
4.19 <i>Valová, Slezák and Slezák v. Slovakia</i> (2004)	486
4.20 <i>Broniowski v. Poland</i> (2004)	489
4.21 <i>Doğan and Others v. Turkey</i> (2004)	508
4.22 <i>Străin and Others v. Romania</i> (2005)	518
4.23 <i>Xenides-Arestis v. Turkey</i> (2006)	524
4.24 <i>Blečić v. Croatia</i> (2006)	529
PART FIVE. USEFUL RESOURCES ON HOUSING AND PROPERTY RESTITUTION	537
1 General Resources	537
2 Country/Regional Resources	539
3 Useful Web Sites	545
<i>Index</i>	547

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

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.

First off, special thanks are due to Jessica Marasovic of the Centre on Housing Rights and Evictions (COHRE), who helped me itemise and access many of the standards found in this volume. Her computer-savvy ways and constantly upbeat spirit greatly assisted throughout the preparation process. Thanks also to Dima Yared for her efforts and to Rhodri Williams, who provided some of the more difficult-to-access texts concerning Bosnia-Herzegovina.

I am very thankful to the Board of Directors of COHRE, most notably our chairperson, John

Packer, for approving my request to take a sabbatical leave from my position as executive director of COHRE, without which I may have never found the time to complete this and other works.

And thank you, too, to the many extraordinary people whom I met and who assisted me in so many important ways along the arduous and far too lengthy road that was required to bring this book to fruition. I was fortunate enough to have worked on this volume in a number of my favourite countries – Australia, Cambodia, Canada, Palestine, Switzerland, and Thailand – and offer anonymous thanks to the dozens of friends and other colleagues in these and other places who helped out in important but often unknown ways.

I am especially grateful to John Berger at Cambridge University Press for his support for this project and his extraordinary patience in waiting so calmly for it to come to an end.

And, as always, my deepest thanks go to Kirsten Young – The Harling – inspiration, lifesaver, soulmate, partner, source of my joy, light of my day.

Scott Leckie
Bangkok, 6 August 2006

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

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.

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

xx

Preface

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

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)**Preface**

xxi

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

Cambridge University Press

978-0-521-85875-5 - Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials

Edited by Scott Leckie

Frontmatter

[More information](#)

xxii

- (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/tehis/vtx/rsd> for Part One – Section 3 (Voluntary Repatriation

Preface

- 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).