

Reparation Programmes



There is a growing realization in the humanitarian community that for durable solutions to be established in the places of origin of displaced persons, security must be ensured, property must be restored and basic services and infrastructure must be provided.¹ Reparation programmes form an important component of such durable solutions by facilitating the voluntary return of displaced persons, recognizing that injustice has occurred and providing material remedies that assist the reintegration of displaced persons in their places of origin.

IOM's Reparation Programmes provide expert advice, technical cooperation and operational assistance to support and build the capacity of governments and international bodies in establishing and implementing reparation programmes. IOM's mandate of facilitating orderly migration to benefit migrants and society includes services that contribute to the humane and sustainable return of displaced persons, as well as effective respect for their human rights. This policy brief describes the interrelationship between displaced persons and other victims of conflict and reparation programmes, and it provides guidelines for addressing projects that might have a reparations component.

For further information or assistance, please contact ReparationsTeam@iom.int at headquarters in Geneva.

I. Introduction

Conflicts and other crises frequently involve the displacement of large numbers of people and almost always entail the violation of human rights and the loss of property rights.² Reparation programmes that restitute or provide other remedies for the loss of property rights or compensate



victims of human rights violations form an important part of post-crisis recovery measures by establishing conditions that allow displaced persons to return voluntarily, in safety and with dignity, to their places of origin or to resettle somewhere else. When effectively implemented, reparation programmes take into account the needs and concerns of local communities and provide social stability, thereby reducing the chances of relapse into conflict and unwanted displacement in the future.

II. Trends

At the end of 2008, there were approximately 26 million people internally displaced by conflict and other crises in the world, of whom 4.6 million were newly displaced.³ Women and children account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons.⁴ Further, sexual violence is often used as a tactic of war to disperse and/or forcibly relocate civilian members of a community or ethnic group.⁵ Internally displaced persons were often exposed to a wide range of discriminatory practices and human rights violations. Many were also deprived of their land and houses as a result of destruction or looting in 33 countries in 2008.⁶ As indicated above, it is increasingly understood in the humanitarian community that durable solutions in the places of origin of displaced persons depend, amongst others, on restoration of property.⁷ Reparation programmes form an important component of such durable solutions by facilitating the voluntary return of displaced persons, recognizing that injustice has occurred and providing material remedies that assist the reintegration of displaced persons in their places of origin. Nonetheless, the international community often concentrates on allocating resources to emergency responses without following up with sufficient resources for post-crisis recovery, including reparations.

It is noteworthy that of the three countries that have the largest internally displaced populations, Sudan (4.9 million), Colombia (between 2.65 and 4.36 million) and Iraq (2.84 million),⁸ two, namely Colombia and Iraq, have established national reparation programmes.⁹

III. Reparations in International Law

International human rights law recognizes that persons whose rights are violated are entitled to an effective remedy.¹⁰ International humanitarian law (that is, the law governing armed conflicts) provides that a party to a conflict which violates such laws is liable to pay compensation.¹¹ Displacement is often caused by, or results in, large-scale human rights violations. Reparations are a remedy for such violations. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law define reparations as one or more of the following: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹² The recognition that gross human rights violations have occurred and the implementation of reparations for harm suffered are an important factor in reaffirming accountability, justice and the rule of law.

Displacement also invariably gives rise to issues relating to property. Homes, land and property left behind by displaced persons are often occupied or used by others. Such secondary occupation or use violates the property rights of those displaced and hinders those wishing to





return to their places of origin. The Universal Declaration of Human Rights states that persons shall not be arbitrarily deprived of their property.¹³ It is now acknowledged in international legal principles that displaced persons have the right to have restored or be compensated for any housing, land or property of which they were arbitrarily or unlawfully deprived.¹⁴

IV. IOM Services Provided

IOM's mandate of facilitating orderly migration to benefit migrants and society includes services that contribute to the humane and sustainable return of displaced persons, as well as effective respect for their human rights. In line with the IOM Strategy adopted by IOM's member states,¹⁵ the Reparation Programmes Team, together with IOM field offices around the world, provides assistance to governments and international bodies in implementing reparation programmes that restitute or provide other remedies for the loss of property rights or that compensate victims for human rights violations. At headquarters, the Reparation Programmes Team works in close collaboration with the Emergency and Post Conflict Division.

IOM is the only international organization that itself has implemented and completed large-scale reparation programmes. The implementation of a reparation programme raises particular challenges given the large number of (often poorly documented) claims, strong political pressure to deliver results in a short period of time, limited financial and human resources, the suffering of victims and a volatile political and social environment. In providing assistance to those who establish or implement a reparation programme, IOM draws on best practices and lessons learned in other international and national reparation programmes while taking into account the unique circumstances of each situation.

IOM's Reparation Programmes Team comprises experts, including lawyers, project managers, training officers and information technology specialists, who together have decades of hands-on practical experience in many reparation programmes implemented around the world. They provide the following expert advice, technical cooperation and operational assistance:

1. Policy recommendations, including concerning the legal framework that serves as a basis for the reparation programme.
2. Field surveys to assess requirements relating to restitution, compensation or other remedies.
3. Comparative analyses of other reparation programmes, including lessons learned and best practices.
4. Technical assistance and capacity building relating to the establishment and implementation of the reparation programme, including in the following areas:
 - a. the organizational structure of the programme;
 - b. public outreach campaigns;
 - c. collection and registration of claims;





- d. rules and operational procedures to process claims;
- e. legal criteria and mechanisms to resolve claims;
- f. notification of decisions to claimants;
- g. payment of compensation or implementation of other remedies;
- h. auditing procedures and mechanisms;
- i. information technology services supporting all aspects of the programme, including the design of a database and software applications; and
- j. training of staff in all of the above areas.

IOM has the institutional experience and capacity to fully implement all of the above aspects of a large-scale reparations programme.

V. IOM's Perspective

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The following guidelines should be taken into account with respect to projects that might have a reparations component. The Reparations Programmes Team is available to answer any questions and provide advice and support relating to such issues and to the development of such projects.

1. Consider suggesting inclusion of reparations provisions to redress gross violations of human rights or the loss of property rights in peace agreements or voluntary return agreements.
 - For example, investigate possibilities for the inclusion of a reparations programme in a country programme of the United Nations Peacebuilding Fund or the United Nations Development Programme Multi-Donor Trust Fund as part of a peacebuilding process.¹⁶
2. In the event that a "Truth and Reconciliation Commission" is established following a conflict or large-scale human rights violations, consider suggesting that the Commission's mandate include recommendations relating to reparations for the victims.
3. If governments, international bodies or non-governmental organizations are already discussing the possibility of a reparations programme, then consider proposing that an expert assessment be undertaken by IOM (or by IOM in conjunction with others who are already considering the possibility of a programme) of what kind of reparations mechanism would be most suitable to ensure the timely and fair resolution of claims and provision of remedies.
4. When registering or profiling displaced persons, consider the usefulness of also obtaining information about whether they have lost their homes, land or businesses in their place of origin. What type of property was lost? Was their property looted/destroyed or appropriated in an unlawful/arbitrary manner? Was it lost in a natural disaster?





5. It is particularly difficult to obtain information relating to gross human rights violations, especially for highly traumatized persons such as victims of rape, mutilation, amputation or other violent crimes. It is highly recommended that specialized organizations (i.e., women's groups, victims' associations, non-governmental organizations) that have experience in working with such individuals be consulted prior to any attempt to collect such information so as not to traumatize victims further due to the inexperience of the person collecting the data.
6. Any personal data collected relating to (potential) claimants of a reparation programme should be kept secure and confidential, with particular care being taken with respect to personal data relating to victims of human rights violations. Reference should be made to IOM's Data Protection Principles for details, including on consent by the claimants, use and disclosure of the data and risks involved.¹⁷
7. Governments should ensure that homes, land and businesses left behind by displaced persons are secured. In the event that secondary occupants have taken over the homes, land or businesses of displaced persons, consider proposing that adequate measures be implemented (including compensation or alternative housing) to ensure that secondary occupants are not rendered homeless if displaced persons wish to return to their places of origin. Land and property registry offices should be protected from looting or destruction.
8. With respect to the loss of property rights, reparation programmes should not only include persons who owned property, but also those who had permanent or temporary user rights, including farming, grazing and water rights, or tenancy rights, including in socially owned properties.
9. The specific needs of particularly vulnerable groups such as victims of sexual violence, single/widowed women or orphaned children should be given special attention at all stages of the preparation, establishment and implementation of a reparation programme.





VI. IOM Reparation Programmes: Overview of Projects

Technical assistance and capacity building provided to:	
Bosnia and Herzegovina (1996)	Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina, established by the 1995 Dayton Peace Agreement
Colombia (2006 – present)	National Reparation and Reconciliation Commission, under the Colombian Justice and Peace Law Government of Colombia, in the implementation of the Administrative Reparation Programme for victims who suffered human rights violations by illegal groups
East Timor (2007 – present)	Government of East Timor, in the development of the Cash Recovery Grant programme for displaced persons and in formulating a comprehensive property rights framework as part of a durable solution to internal displacement in East Timor
Guatemala (2007)	National Reparations Programme, in the design and development of a comprehensive database system to support the reparation process relating to human rights violations, including massacre, murder, torture, rape and forced displacement in Guatemala
Iraq (2003 – present)	Commission for the Resolution of Real Property Disputes, in the implementation of a property restitution and compensation programme in Iraq for persons displaced by the Baathist regime of Saddam Hussein
Iraq (2008 – present)	Iraqi Ministry of Displacement and Migration, in the context of the displacement and related property issues arising after the fall of Saddam Hussein's Baathist regime (partly with UNAMI and UNHCR)
Kenya (2008)	Government of Kenya, on the establishment of a national reparation programme in the wake of internal displacement and related property issues arising from post-election violence in 2007
Sierra Leone (2008 – present)	Government of Sierra Leone, in the implementation of a national reparation programme for victims of the conflict who suffered human rights violations including amputation, sexual violence or murder (reparation programme funded by the UN Peacebuilding Fund)
Turkey (2006-2007)	Turkish Ministry of Interior, in the framework of a compensation programme for internally displaced persons in Turkey for violation of their property rights (with UNDP-Turkey)
Programme fully implemented:	
German Compensation Programmes (Slave/Forced Labour, Property and Personal Injury) (2000-2006)	International compensation programme relating to claims against the German Government and German companies arising out of Nazi injustice <ul style="list-style-type: none"> • Over 400,000 claims from 120 countries in 27 languages registered, processed and resolved • Approximately € 476 million paid to 118,000 beneficiaries
Holocaust Victim Assets Programme (Swiss Banks) (2001-2007)	International compensation programme relating to claims against Swiss Banks arising out of Nazi injustice <ul style="list-style-type: none"> • Over 62,000 claims registered, processed and resolved • Approximately USD 32 million paid to 22,000 beneficiaries
Humanitarian assistance provided to:	
Humanitarian and Social Programme (2001-2005)	<ul style="list-style-type: none"> • Needy elderly Roma, Jehovah's Witness, disabled and homosexual survivors of Nazi persecution • 81 projects implemented in 17 countries in Eastern and Central Europe for 74,000 beneficiaries for USD 35 million
Roma Humanitarian Assistance Project (2007-2009)	<ul style="list-style-type: none"> • Elderly Roma survivors of Nazi persecution • Eight projects implemented in five South-Eastern European countries for 14,000 beneficiaries for EUR 10.3 million





VII. References

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Human Rights and Natural Disasters, Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster, Brookings-Bern Project on Internal Displacement, (Pilot Version, March 2008).

Internal Displacement, Global Overview of Trends and Developments in 2008, Internal Displacement Monitoring Center and Norwegian Refugee Council, April 2009.

International Covenant on Civil and Political Rights, 1966.

IOM Data Protection Policy, IN/00138, May 2009.

IOM Strategy, Resolution No. 1150 (XCIII) adopted by the Council on 7 June 2007.

Peacebuilding Commission – Working Group on Lessons Learned, Durable Solutions for Internally Displaced Persons: An Essential Dimension of Peacebuilding, Briefing Paper, Walter Kälin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, 2007.

Property Restitution and Compensation, Practices and Experiences of Claims Programmes, International Organization for Migration, 2008.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1).

Rule of Law Tools for Post-Conflict States, Reparation Programmes, Office of the United Nations High Commissioner for Human Rights, New York and Geneva 2008.

The “Pinheiro Principles” on Housing and Property Restitution for Refugees and Displaced Persons approved by the UN Sub-Commission on Protection and Promotion of Human Rights in August 2005.

The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by UN General Assembly Resolution 60/147 of 16 December 2005.

United Nations Development Programme Multi-Donor Trust Fund, www.undp.org/mdtf/overview.shtml

United Nations Peacebuilding Fund, www.unpbf.org

United Nations Security Council Resolution 1325 on Women, Peace and Security, S/RES/1325 (2000) & *United Nations Security Council Resolution 1820 on Women, Peace and Security*, S/RES/1820 (2008).

Universal Declaration of Human Rights, 1948.





ENDNOTES

- ¹ *Peacebuilding Commission – Working Group on Lessons Learned, Durable Solutions for Internally Displaced Persons: An Essential Dimension of Peacebuilding*, Briefing Paper, Walter Kälin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, 2007.
- ² Property rights include ownership; permanent or temporary user rights (e.g., for farming, to graze animals or to access water); and tenancy rights, including those in socially owned properties.
- ³ *Internal Displacement, Global Overview of Trends and Developments in 2008*, Internal Displacement Monitoring Centre and Norwegian Refugee Council, April 2009. These figures do not include persons internally displaced by natural disaster.
- ⁴ *United Nations Security Council Resolution 1325 S/RES/1325/2000*.
- ⁵ *United Nations Security Council Resolution 1820 S/RES/1820/2008*.
- ⁶ *Internal Displacement, Global Overview of Trends and Developments in 2008*, Internal Displacement Monitoring Centre and Norwegian Refugee Council, April 2009.
- ⁷ *Peacebuilding Commission – Working Group on Lessons Learned, Durable Solutions for Internally Displaced Persons: An Essential Dimension of Peacebuilding*, Briefing Paper, Walter Kälin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, 2007.
- ⁸ Ibid.
- ⁹ IOM is providing assistance to the Colombian Government agencies responsible for the implementation of the Administrative Reparations Programme, which provides compensation for victims of forced displacement; sexual violence; murder; torture; hostage taking; recruitment of child soldiers and enforced disappearance. IOM is also providing assistance to Iraq's Ministry of Displacement and Migration to develop and implement policies aimed at addressing displacement and return-related housing, land and property issues that have arisen following the fall of Saddam Hussein's Baathist regime in 2003. Competing claims over land and property, destroyed and damaged property, and lack of access to affordable housing are key issues hindering a return of Iraqi displaced persons and refugees.
- ¹⁰ *Universal Declaration of Human Rights*, 1948 (Article 8), *International Covenant on Civil and Political Rights*, 1976 (Article 2.3). *The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted by General Assembly Resolution 60/147 on 16 December 2005.
- ¹¹ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1)*, Article 91.
- ¹² *The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Section IX.
- ¹³ Article 21.3 of the *Guiding Principles on Internal Displacement*, 1998 further states that "Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use."
- ¹⁴ *The "Pinheiro Principles" on Housing and Property Restitution for Refugees and Displaced Persons*, approved by the UN Sub-Commission on Protection and Promotion of Human Rights in August 2005.
- ¹⁵ *IOM Strategy*, Resolution No. 1150 (XCIII) adopted by the Council on 7 June 2007. The key strategy points relevant for IOM's Reparation Programmes are found in paragraphs 3 and 9 and are reproduced below:
 3. To offer expert advice, research, technical cooperation and operational assistance to States, intergovernmental and non-governmental organizations and other stakeholders, in order to build national capacities and facilitate international, regional and bilateral cooperation on migration matters.
 9. To participate in coordinated humanitarian responses in the context of inter-agency arrangements in this field and to provide migration services in other emergency or post-crisis situations as appropriate and as relates to the needs of individuals, thereby contributing to their protection.
- ¹⁶ www.unpbf.org, www.undp.org/mdtf/overview.shtml
- ¹⁷ See IOM Data Protection Principles, IN/00138, May 2009.

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